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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 128



DATE: Tuesday, August 29th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, August 29th,
1989, commencing at 8:30 a.m.

VOLUME 128

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

(i)

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
MR. B.R. ARMSTRONG	ANGLERS & HUNTERS
MR. G.L. FIRMAN	
MR. D. HUNTER	NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
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MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. MCKERCHER)	OUTFITTERS ASSOCIATION

(ii)

APPEARANCES: (Cont'd)

MR. L. GREENSPOON) MS. B. LLOYD)	NORTHWATCH
MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

(iii)

APPEARANCES: (Cont'd)

MR. R.L. AXFORD

CANADIAN ASSOCIATION OF
SINGLE INDUSTRY TOWNS

MR. M.O. EDWARDS

FORT FRANCES CHAMBER OF
COMMERCE

MR. P.D. McCUTCHEON

GEORGE NIXON

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

(iv)

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>BRUCE ADAMSON,</u>	
<u>SERGE TENAGLIA,</u>	
<u>NEVILLE WARD,</u>	
<u>GORDON PYZER,</u>	
<u>DAVID M. HOGG, Resumed</u>	21683
Continued Cross-Examination by Mr. Edwards	21683

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
780	Letter from Mr. Currie, District Manager, Nipigon District, dated June 29, 1989 along with map entitled: Proposed Amendment, Nipigon District Land Use Guidelines.	21688

1 ---Upon commencing at 8:35 a.m.

2 THE CHAIRMAN: Good morning. Please be
3 seated.

4 MS. BLASTORAH: Mr. Chairman, just one
5 housekeeping matter. I now have copies of Exhibit 779
6 which was the memorandum to Mr. Pyzer relating to
7 travel on closed road charges. So I will make those
8 available to the Board and the parties.

9 THE CHAIRMAN: Thank you.

10 We are ready, Mr. Edwards.

11 MR. EDWARDS: Yes. Thank you, Mr.
12 Chairman.

13 BRUCE ADAMSON,
14 SERGE TENAGLIA,
15 NEVILLE WARD,
 GORDON PYZER,
 DAVID M. HOGG, Resumed

16 CONTINUED CROSS-EXAMINATION BY MR. EDWARDS:

17 Q. Mr. Tenaglia, yesterday I asked you a
18 couple of questions with respect to the District Land
19 Use Guidelines in the Nipigon District and I have a few
20 more, just hoping to get to a general point from a
21 specific example.

22 I understand, sir, that you were the
23 forest management supervisor in the Nipigon District
24 from July of '84 until October of '87?

25 MR. TENAGLIA: A. That's correct.

1 Q. And in October of '87 you went to the
2 Wawa District?

3 A. That's correct.

4 Q. Now, at page 66 of the witness
5 statement there is a list of the location of -- of
6 factors influencing the location of forest access road
7 corridors. Do you have that page, sir?

8 A. Yes, I do.

9 Q. Now, No. 4 refers to the factor of:
10 "identified values and features (eg.
11 aquatic, terrestrial, recreational,
12 aesthetics, safety and other areas of
13 concern) which may affect road locations
14 in specific areas or the recognition that
15 resource extraction may not be the
16 primary use..."

17 And the example given, of course, is the
18 Nipigon District Land Use Guidelines, Area No. 10 in
19 Caribou Lake, and that's reference 1 and I believe that
20 is reproduced, as we noted yesterday, at pages 100 to
21 102.

22 When you were the forest management
23 supervisor, did you find that the land use guidelines
24 were influential with respect to determining land use
25 in your district?

1 A. They were influential in helping us
2 determine how to deal with particular issues,
3 particularly road issues in and around the zone 10, the
4 Caribou Lake zone.

5 Q. Were they influential with respect to
6 land use decisions?

7 A. Well, the land use decision is
8 already made through the District Land Use Guidelines.

9 Q. I see. And when you were forest
10 management supervisor, did you attempt to apply the
11 guidelines in your practice?

12 A. Certainly relative to roads, the
13 roads that were heading into that area. The decision
14 in the district was to -- because of the importance of
15 commercial tourism and public recreation, a decision in
16 the district was to gate the roads that were heading
17 into that zone to protect -- to afford commercial
18 tourism the strongest protection that we felt we could
19 afford it.

20 Q. Did the protection for commercial
21 tourism -- or did the protection for tourism include
22 the 120-metre shoreline reserve on designated canoe
23 routes?

24 A. In any of the planning processes, I
25 don't know -- or I don't recall that there was any

1 harvesting proposed around canoe routes during my time
2 in Nipigon.

3 Q. Yes, but from your experience in
4 Nipigon, did you understand that the 120-metre
5 shoreline reserve on designated canoe routes was
6 intended to protect tourism values?

7 A. Yes. That's one means of protecting
8 tourism values.

9 Q. It certainly is. And that 120-metre
10 shoreline reserve was inserted after a lengthy planning
11 process, both at the strategic level and at the
12 district level?

13 A. Yes, through the approval of District
14 Land Use Guidelines.

15 Q. Yes. And I understand, sir, that 200
16 metres would be the ordinary reserve for a waterway
17 park. Do you know that, or do you agree with that?

18 A. I'm aware that there's a number of
19 waterway parks, yes, with a 200-metre area of concern
20 or reserve. I don't know if that's the provincial
21 standard. Maybe Mr. Pyzer --

22 Q. Mr. Pyzer was nodding his head.
23 Would you be aware, sir, if that's a regularly used
24 figure for waterway parks, if not a standard?

25 MR. PYZER: A. I couldn't say

1 definitively. I know it's larger than 120 though and
2 200 does seem to stick in my mind, but I wouldn't want
3 to -- I'm certainly not an expert on that.

4 Q. Mr. Tenaglia, you are familiar with
5 the figure of 200 as being regularly used in waterway
6 parks; are you?

7 MR. TENAGLIA: A. Yes.

8 Q. Thank you. Now, designated canoe
9 routes would be created for some of the same reasons as
10 a waterway park in your experience; is that correct,
11 Mr. Tenaglia?

12 A. They're identified to afford them, I
13 guess, more protection and to recognize their value.

14 Q. And is that a special recreation and
15 touristic value that's recognized?

16 A. Yes.

17 Q. Now, the designated canoe routes that
18 were provided the protection of a 120-metre shoreline
19 reserve were not inside Wabakimi Provincial Park; they
20 tended, sir, to be rivers which flowed through the
21 park, but the actual reserve was, in all cases, outside
22 of the park; is that correct?

23 A. Yes, I would agree with you there.

24 Q. Sir, I'm going to produce and show to
25 you a document dated June 29th, 1989 which is a letter

1 from a Mr. Currie, the District Manager in Nipigon
2 District, with respect to a public notice. The letter
3 is just addressed to "Dear Sir or Madam", and contains
4 a public notice and a fact sheet. I'm also going to
5 provide to you, sir, a map which apparently accompanied
6 this correspondence.

7 MR. EDWARDS: I have one good copy and a
8 number of photocopies which I have attempted to
9 replicate the important parts of the map on. Even on
10 the original, Mr. Chairman, it's difficult to read and
11 I will just tender it, if I may, it is the best copy
12 that I could come up with. (handed)

13 THE CHAIRMAN: Thank you. These two
14 documents will be Exhibit 780. Mr. Edwards?

15 MR. EDWARDS: Yes.

16 THE CHAIRMAN: We need one more copy of
17 the letter up here. Do you have another copy of that?

18 MR. EDWARDS: (handed)

19 ---EXHIBIT NO. 780: Letter from Mr. Currie, District
20 Manager, Nipigon District, dated
21 June 29, 1989 along with map
entitled: Proposed Amendment,
Nipigon District Land Use
Guidelines.
22

23 MR. EDWARDS: Q. Sir, I understand on
24 the map there are a number of river or canoe routes
25 marked in red, that would be in the northwest most

1 portion of the map?

2 MR. TENAGLIA: A. North of the CN line?

3 Q. North of the CN line.

4 A. And in zone 10.

5 Q. In zone 10. And I understand that
6 zone 10 is indicated by the heavy black line which
7 really follows the CN line coming horizontally across
8 the map and then curves off to the northeast?

9 A. Yes.

10 Q. And I think it's possible to identify
11 Wabakimi Provincial Park as the -- in the northwest
12 quadrant of that map?

13 A. Yes.

14 Q. And I understand, to synopsize, that
15 the changes proposed is with respect to a 120-metre
16 shoreline reserve on a number of waterbodies. And
17 starting from the lower left, just to the very
18 southwest of Wabakimi Provincial Park, I understand
19 that that is the Nemo River?

20 A. Yes.

21 Q. And the next one I believe, although
22 it's not very legible even on the original, is the
23 Balfour River?

24 A. Correct.

25 Q. Then Lookout River?

1 A. I can't see that.

2 Q. Well, I see the word Lookout on my
3 copy here.

4 A. How's that?

5 Q. You have Onamakawash Lake and--

6 A. Yes, just to the --

7 Q. --Lookout River flows to the
8 northeast from Onamakawash Lake?

9 A. Okay, sorry.

10 Q. Yes. The next one going to the south
11 east corner of Wabakimi Provincial Park would appear to
12 be the Tamarack River?

13 A. That's correct.

14 Q. And then there is a canoe route which
15 goes through Caribou Lake and Gibson Lake?

16 A. That's right.

17 Q. Yes. And this is, of course, the
18 Caribou Lake -- zone 10 is referred to as Caribou Lake,
19 and then there's the Caribou River?

20 A. Yes.

21 Q. Part of which does not appear to flow
22 through the -- or to the park. Then coming from the
23 northeast arm of the park -- or rather the eastern arm
24 of the park, would appear to be a route to Whitewater
25 Lake. Do you know what water body that is?

1 A. Yes, I do.

2 Q. Which one is that?

3 A. Just northeast of Wabakimi.

4 Whitewater?

5 Q. Well, no, the route which flows from
6 the eastern arm of the park up towards Whitewater Lake.

7 A. Yes, McKinley Lake.

8 Q. Through McKinley, yes.

9 A. Yes.

10 Q. Which river is that -- which canoe
11 route is that; do you know?

12 A. That may be the part of the Ogoki
13 River, I can't say for sure.

14 Q. All right. And clearly the Ogoki
15 River flows out of the park in the northern most
16 portion?

17 A. That's right.

18 Q. Would the Allan Water be also on the
19 west -- if this map was extended to the southwest,
20 would the Allan Water River be included as a designated
21 canoe route?

22 A. I can't say for sure. I'm not sure
23 what the guidelines for the Sioux Lookout District--

24 Q. All right.

25 A. --how they would address the Allan

1 Water.

2 Q. All right. And just for short form
3 purposes, I believe to the north we have the Grayson
4 River and Lake, Rockcliff Lake, Whitewater Lake and
5 Whiteclay and the Pikitigushi River is on the far
6 northeast of the zone. Would those all sound familiar
7 and correct?

8 A. Yes.

9 Q. Generally, with the exception of the
10 Pikitigushi, these rivers appear to flow in part
11 through the -- or the canoe routes that they form part
12 of go through Wabakimi Provincial Park; correct?

13 A. They do.

14 Q. Would you agree that there is quite a
15 number of outfitters in the area on Smoothrock and
16 Caribou and certainly on Whitewater in the Ogoki area?

17 A. Yes, there is and there's a lot of
18 other interest groups that use -- heavily use Wabakimi
19 Park.

20 Q. Right. A lot of canoeists?

21 A. That's right.

22 Q. Recreational users?

23 A. Yes.

24 Q. Now, sir, I'm going to direct your
25 attention to the proposal which is set out in the fact

1 sheet.

2 MS. BLASTORAH: Mr. Chairman, did we get
3 an exhibit number for this and is it all one package?

4 THE CHAIRMAN: We did, Exhibit 780.

5 MR. EDWARDS: Mr. Chairman, are the
6 members of the Board having any trouble following on
7 the map copies that you have? I can refer the original
8 to you if you need it for a moment.

9 THE CHAIRMAN: No. I mean, we see the
10 canoe routes outlined. It depends what your questions
11 are.

12 MR. EDWARDS: Q. Sir, referring to the
13 proposal at page 3 of the fact sheet, the amendment
14 proposed is:

15 "To remove the 120-metre no-cut reserve
16 on the designated canoe routes in Zone 10
17 of the Nipigon District and actively
18 manage these areas using the Timber
19 Management Guidelines for the Protection
20 of Tourism Values and the Timber
21 Management Guidelines for the Protection
22 of Fish Habitat."

23 It sets out the background and the
24 immediate proposal by the MNR, and under the words The
25 Proposal:

1 "The Ministry of Natural Resources
2 proposes to actively manage the canoe
3 routes in Zone 10 by using approved
4 guidelines, in particular tourism,
5 the Ministry proposes a consultative
6 approach to produce variable dimension
7 reserves which will provide maximum
8 protection for the canoe routes."

9 Now, you indicated yesterday, sir, that
10 you were not familiar with the idea that a proposed
11 change to the DLUG was underway, but by reading this
12 are you able to understand what the proposal is?

13 MR. TENAGLIA: A. Yes, and last night I
14 did contact the district to confirm that there was this
15 amendment.

16 Q. Oh, I see. So you've made some
17 inquiries and--

18 A. Correct.

19 Q. --received some information; did you?

20 A. Yes.

21 Q. Now, the proposal requests that these
22 changes, the proposed changes go to Mr. - and I
23 apologize to this gentleman if I pronounce his name
24 incorrectly - is it Mr. Wauksmith?

25 A. Yes, Bill Wauksmith.

1 Q. Bill Wauksmith. He is the unit
2 forester and trained as a forester?

3 A. That's correct.

4 Q. Do you know him to be trained as a
5 planner?

6 A. I'm not sure what formal training
7 planners require. Maybe Mr. Pyzer wants to speak to
8 that.

9 Q. Would he be regarded in the MNR
10 scheme of things as a forester?

11 A. Certainly.

12 Q. Yes. And the reason given to the
13 public for the change and justifying the change is that
14 the consultative approach to produce variable dimension
15 reserves will produce maximum protection for the canoe
16 routes.

17 Now, sir, is the real reason -- or would
18 the effect of this change really be to free up more
19 wood to be cut?

20 A. I don't know that I can speak to
21 that.

22 Q. Is there any other possible rationale
23 that you can come up with from your experience in the
24 Nipigon District? Would there be any pressure from any
25 other group that you're aware of from your experience

1 in Nipigon?

2 THE CHAIRMAN: Mr. Freidin?

3 MR. FREIDIN: Mr. Chairman, I'm not too
4 sure where my friend is going with this, but I can
5 advise you that the thinking behind this proposal is no
6 different than the thinking that went behind the change
7 from the doughnuts that we dealt with in great detail
8 in Panel No. 1 where, in fact, we decided that rather
9 than just put on reserves with no consideration to
10 whether the width of them was too wide or too narrow,
11 that rather by just putting down a 120-metre reserve as
12 something, these things would be looked at in a little
13 bit more detail,

14 And, in fact, so there could be a
15 decision made as to what was required to protect
16 non-timber values, part of the rationale being where
17 wood in fact could be made available where it was not
18 necessary to tie it up, if that was a desirable thing
19 to do.

20 So that this is nothing different than
21 that and we have certainly dealt with that at great
22 length.

23 THE CHAIRMAN: Well, with respect, Mr.
24 Freidin, I think Mr. Edwards is entitled to explore
25 what the rationale is behind this.

1 MR. FREIDIN: I got up to indicate what
2 the rationale was. The witness was unable to do so.

3 MR. EDWARDS: Q. Sir, from your
4 experience in the Nipigon District, particularly with
5 respect to your experience in zone 10, would there be
6 any pressure from the recreationists or from the
7 tourist outfitters to decrease the size of the zone;
8 would you expect that to happen?

9 MR. TENAGLIA: A. Yes, I think so.
10 There is always pressure to increase the size of the
11 zones.

12 Q. Sir, I asked you about whether there
13 would be pressure from those groups to decrease the
14 size of the zones?

15 A. Oh, sorry, I thought you said
16 increase. No.

17 Q. No.

18 THE CHAIRMAN: Is it possible, Mr.
19 Tenaglia, that going through this amendment procedure
20 you would in fact end up with increases in the reserve?

21 MR. TENAGLIA: Quite possibly.

22 THE CHAIRMAN: In your opinion?

23 MR. TENAGLIA: Yes.

24 THE CHAIRMAN: And conversely also
25 decreases; is that correct?

1 MR. TENAGLIA: Yes. And I think at least
2 we would probably also get indications of other areas
3 that we should consider where it's the specific areas
4 where the increases should be.

5 And I would agree with Mr. -- certainly
6 with what Mr. Freidin said. When the District Land Use
7 Guidelines were developed, the straight line approach
8 or the donought approach was the practice, and I think
9 we are trying to change that approach and, where
10 possible, we are trying to free up wood for the
11 industry.

12 And I think that approach is addressed in
13 the tourism guidelines where, in the concepts section
14 of it, it talks about variable dimensions producing
15 fixed results and fixed dimensions producing variable
16 results. These fixed dimensions, these 120-metre
17 reserves just do that, tie up a lot of timber and don't
18 necessarily protect the values.

19 THE CHAIRMAN: Going back to an earlier
20 area canvassed by Mr. Edwards, if it were a waterfront
21 park and if, as you indicated, a 200-metre reserve is
22 normal or found often, is the same rationale used by
23 the Ministry with respect to waterfront parks, a
24 straight line approach, a minimum of 200 metres, or do
25 you also use variable dimensions for a waterfront park?

1 MR. TENAGLIA: Well, that would be the
2 baseline. We would start at 200 metres and then we
3 would build on that by addressing -- by introducing
4 other -- identifying other areas of concern and
5 applying any mitigating measures.

6 I believe I spoke to that in my lead
7 evidence where I used the park as an example and I
8 spoke how we would restrict roads -- tertiary roads in
9 the area outside of the 200-metre zone of the park. We
10 may very well build on that by adding skyline reserves
11 in scenic vistas along the park.

12 THE CHAIRMAN: But with respect to a
13 waterfront park, you would still use a minimum
14 dimension of, say, 200 metres and then increase it in
15 areas where you thought it appropriate as opposed to
16 decreasing the 200-metre reserve for a waterfront park?

17 MR. TENAGLIA: I think a park would be a
18 different situation as opposed to a canoe route. They
19 are set in regulation and those boundaries are fixed.

20 THE CHAIRMAN: Okay.

21 MR. MARTEL: Could I ask a question? If
22 you are establishing a park, would you move people out
23 of them?

24 A waterway park, for example, if there
25 was something there and you were establishing it -

1 whether it be a tourist operator or a cottager - and
2 you were establishing a new park, would you in fact
3 move the people who were there out of the area?

4 MR. TENAGLIA: I don't think I can speak
5 to that. Mr. Pyzer?

6 MR. PYZER: I don't think actually any of
7 the panel here can speak to it. I certainly can't
8 either.

9 There is a blue book -- there is a policy
10 document on parks, a very thick voluminous document in
11 terms of the classification of parks, how they're set
12 up, the planning process one goes through. And in
13 terms of all of these questions dealing with people,
14 each one would be dealt with on a case-by-case basis
15 and on a park-specific basis.

16 It's very, very difficult to answer that.
17 With all due respect, I don't believe anyone on this
18 panel is capable of doing that.

19 ---Discussion off the record

20 MR. EDWARDS: Thank you, Mr. Chairman.

21 Q. Sir, would you agree that the effect
22 of this amendment, if it were to go through, is to take
23 what is a designated tourism area and provide no other
24 protections beyond those available throughout the area
25 of the undertaking; that is to say, you apply the

1 Timber Management Guidelines for the Protection of
2 Tourism Values, Fish Habitat, Moose Habitat, perhaps
3 you actively manage, but in terms of minimal
4 protections there is nothing beyond what everybody else
5 has?

6 MR. TENAGLIA: A. Yes, I would agree
7 with you. We are just actively trying to actively
8 manage what was once looked at as -- what was thought
9 as as an appropriate means of managing timber, the
10 doughnut approach.

11 Q. And in response to the Chairman's
12 question about whether it is possible, in certain
13 circumstances, to actually increase the reserve on a
14 particular portion of one of those canoe routes, would
15 it be your understanding that the effect of this -- the
16 net effect of this amendment will be to free up areas
17 for timber management?

18 A. No, I don't know that I can agree
19 with that.

20 Q. But you did indicate some concern;
21 did you not, about wood which is locked in to these
22 reserves unnecessarily?

23 A. Yes.

24 Q. And it's not available for timber
25 management?

1 A. Yes.

2 Q. And that's an ongoing concern in the
3 Ministry?

4 A. Yes, it is.

5 Q. Now, sir, going to these guidelines
6 which I guess will be actively managed in this area if
7 this amendment goes through to protect the tourism
8 values, is it true that the Timber Management
9 Guidelines for the Protection of Tourism Values in
10 certain circumstances can allow cutting to the water's
11 edge?

12 A. The tourism guidelines, yes, they
13 would allow that. I don't know in this particular case
14 whether that would be the intent.

15 Q. Now, with respect to the Timber
16 Management Guidelines for the Protection of Fish
17 Habitat, do they allow cutting to the shoreline, or is
18 there a reserve set out in those, and I direct your
19 attention to Table 1 of those guidelines?

20 A. Maybe Mr. Ward would like to speak to
21 that.

22 Q. Yes, I would appreciate it. Mr.
23 Ward, could you give us some instruction as to whether
24 the Timber Management Guidelines for the Protection of
25 Fish Habitat will prevent cutting to the shoreline in

1 all cases?

2 MR. WARD: A. No, it won't in all cases.

3 And, as we've given in previous evidence, we have
4 indicated why there isn't critical fish habitat on
5 other lakes, those are lakes not being cold water lakes
6 or streams, that you can allow cutting to the shoreline
7 to occur where you do not have critical fish habitat.

8 Q. So the area of concern on other lakes
9 where the slope is between 0 and 15 per cent is just as
10 above for lake trout lakes, self-sustaining brook trout
11 lakes and Aurora trout lakes; that is to say, 30
12 metres?

13 A. If the slope is flat, yes, relatively
14 flat.

15 Q. Yes. So there is a 30-metre area of
16 concern and, notwithstanding that, the fish habitat
17 guidelines and the area of concern planning process, it
18 is still possible to have cutting to the water's edge?

19 A. For other lakes, yes.

20 Q. For other lakes, yes.

21 A. If you look at that Table 1 and you
22 look at under harvesting operations -- or harvesting
23 options, sorry, under Item No. 2 other lakes, you can
24 see the harvesting options include shelterwood or
25 limited clearcutting.

1 Q. Right.

2 A. Do not cut near critical fish
3 habitats or roads?

4 Q. Right. And so those processes, going
5 back to you Mr. Tenaglia, very much rely on members of
6 the public speaking out to protect values; is that
7 correct, the Ministry relies on the members of the
8 public to --

9 MS. BLASTORAH: Mr. Chairman, I just
10 rise, I hope not prematurely, because we seem to be
11 covering ground that has been covered in past panels
12 that really, in my mind, has nothing to do with the
13 access issue and I am just wondering why we are going
14 over the DLUG amendment procedure and how the fish
15 guidelines and the tourism guidelines operate when that
16 has been dealt with extensively in previous panels and
17 doesn't appear to relate to any of NOTOA's issues.

18 THE CHAIRMAN: Mr. Edwards, could you
19 answer that objection?

20 MR. EDWARDS: Yes. I am hoping to use
21 this specific example to get to a general point which
22 is, that the use of the timber management planning
23 tools such as the area of concern planning process to
24 deal with their impact on other non-timber values, in
 particular I hope to refer to roads, and I wish to use

1 this as an example because I think it's a good current
2 example of an effort to change present protections and
3 to put them into, even in designated tourism areas, and
4 I want to ask Mr. Tenaglia about the use of other
5 options beyond just those protections which will exist
6 under the Timber Management Guidelines for the
7 Protection of Tourism Values, et cetera.

8 I would like to ask him about other
9 options, such as using road management as a strategy to
10 protect tourism values, and I want to -- I think this
11 indicates that there is some weaknesses in the
12 protection available and I intend to move on to the
13 more general point of using those tools, such as road
14 planning, to assist in the protection of the values.

15 THE CHAIRMAN: Well, I think if you are
16 going to relate it specifically to road planning, that
17 may be more in keeping with what this panel is
18 supposedly testifying about.

19 Comments on the actual process itself are
20 probably better for Panel 15, to the extent that we are
21 going to deal with them at all in Panel 15, and they
22 haven't already been covered by previous panels.

23 MR. EDWARDS: One of the problems with
24 that, Mr. Chairman, is that the tertiary roads are
25 listed as something that Mr. Tenaglia is testifying

1 about in this panel and they are not designed to be
2 part of the planning evidence in Panel 15, I think in
3 part because of the fact that they are not planned in
4 advance and that's exactly what I want to ask about.

5 THE CHAIRMAN: Okay. Well, why don't you
6 go and move on to the questions relating to the use of
7 roads or planning for roads in terms of trying to
8 protect other values, if that is the point you are
9 trying to make.

10 MR. EDWARDS: Yes.

11 MS. BLASTORAH: Mr. Chairman, just before
12 we move on, I didn't quite catch Mr. Edwards' comment
13 about something not being planned in advance. I just
14 want to clarify.

15 MR. EDWARDS: My recollection, and I
16 intend to ask Mr. Tenaglia about this, was that his
17 evidence was to the effect that tertiary roads are not
18 put on the map before they are built and I want to ask
19 him about that.

20 MS. BLASTORAH: The only reason I rose
21 was because we did hear evidence that they are included
22 in the planning process in the sense that they are
23 dealt with through the area of concern mechanisms.

24 I just didn't want to leave any confusion
25 on the record to the effect that there is no planning

1 with regard to tertiary roads. They are dealt with in
2 the planning process.

3 THE CHAIRMAN: Okay. But I think it's
4 fair for Mr. Edwards to be able to have the opportunity
5 of questioning Mr. Tenaglia on the use of roads in the
6 planning process.

7 MS. BLASTORAH: Oh, I have no problem
8 with that.

9 THE CHAIRMAN: Since he's here in this
10 panel.

11 MS. BLASTORAH: I have no problem. I was
12 indicating that I felt perhaps we should get into that
13 rather than the more general matters.

14 THE CHAIRMAN: Okay.

15 MR. EDWARDS: Q. As my general question,
16 sir: Is it fair to use the timber management planning
17 process, including use management strategies, to
18 protect non-timber values?

19 MR. TENAGLIA: A. Yes, it is.

20 Q. Is it fair, sir, to use the timber
21 management planning process, including use management
22 strategies, to protect moose herds which I think are a
23 non-timber value?

24 A. Mr. Hogg may want to speak to that.

25 Q. Mr. Hogg, would you disagree with Mr.

1 Tenaglia's general observation that one can use the
2 timber management planning process, including use
3 management strategies for roads, to protect non-timber
4 values? Would you exclude moose from the non-timber
5 values?

6 MR. HOGG: A. I would not. Yesterday I
7 had a like discussion with Mr. Tuer and tried to make
8 the point that use management strategies do not have a
9 large role in game management. Certainly the timber
10 management planning process as it relates to habitat
11 has a very significant role, less so use management
12 strategies for roads.

13 Q. Thank you. But it is available?

14 A. It is there.

15 Q. It is one of the tools?

16 A. Yes.

17 Q. Mr. Tenaglia, yesterday when you
18 testified about this special protection available for
19 tourism values in zone 10 you indicated that certain
20 special measures were taken to protect tourism values,
21 particularly the use of gating. Do you recall that?

22 MR. TENAGLIA: A. Yes.

23 Q. On what -- without asking you to give
24 us every single incident, on what types of roads were
25 gates installed? Did it matter as to the class of

1 road?

2 A. If I recall correctly I think they
3 were all primary roads.

4 Q. Primary roads. Were they north or
5 south of the CN line? I mean, the area is north of the
6 CN line, zone 10, so we are talking about roads which
7 are entirely north of the CN line?

8 A. No, they were roads heading into that
9 general direction.

10 Q. I see. And they were ...?

11 A. That were, again if I recall
12 correctly, that were not built yet but had been
13 proposed in the operating plan.

14 Q. I see. And it was identified that
15 there would be gates on those roads when they were
16 constructed?

17 A. That's right.

18 Q. And was one of the reasons for doing
19 that the theory that it's easier to close a road in the
20 first instance rather than to impose a closure after
21 the road has been opened for a period of time?

22 A. Yes, I would agree with that.

23 Q. Sir, what other management tools
24 would have been available to eliminate the necessity
25 for gates; can you think of any?

1 A. Management tools for the protection
2 of...?

3 Q. Tourism values.

4 A. In zone 10?

5 Q. Yes.

6 A. There is a lot of techniques can be
7 used. Certainly the use of skyline reserves around
8 outpost camps or main base lodge camps, control of
9 season of operations -- the harvesting operations,
10 seasonal controls, the controls of use of the roads in
11 terms of when or a period, the time which the roads can
12 be used not -- no heavy traffic say during the heaviest
13 tourism time of the season.

14 Q. Sir, one of the problems that occurs
15 when roads are signed or gated is that there is
16 potential user conflict; correct?

17 A. Yes.

18 Q. Some members of the public or publics
19 would want to use the road and finding a gate would not
20 make their day?

21 A. That is always the case.

22 THE CHAIRMAN: Isn't that the case, Mr.
23 Edwards, with any type of restriction?

24 MR. EDWARDS: That's a very good point,
25 Mr. Chairman. Thank you.

1 Q. Sir, is it not possible to eliminate
2 many of these user conflicts simply by sensible road
3 design?

4 MR. TENAGLIA: A. Not in all cases.

5 Q. In some cases?

6 A. Yes, in some cases I would agree with
7 you.

8 Q. Is it possible to eliminate user
9 conflicts by not pushing the road in so far?

10 A. So far to where?

11 Q. So close to areas of significant
12 tourism interest; in other words, giving up some timber
13 to avoid the pain of having the conflict over the use
14 of the road?

15 A. Yes, I suppose that's right. It
16 depends on how much you are prepared to give up or have
17 to give up to minimize that conflict.

18 Q. And that is a theoretical management
19 tool?

20 A. A theoretical, it may not be a
21 practical.

22 Q. It may not be practical. How much of
23 a buffer do you think, sir, is necessary to eliminate
24 the need for gating or signing a road heading towards a
25 waterbody with an outpost lodge on it?

1 A. I don't think I could answer that.

2 Again, decisions are made based on where the road can
3 be constructed and based on the input that we receive
4 from the different stakeholders.

5 THE CHAIRMAN: Isn't that rather
6 subjective though, Mr. Edwards? There may be a tourist
7 operator that doesn't want any road anywhere near him
8 and there may be another one that might say: As long
9 as you don't come closer than a thousand metres, I am
10 happy.

11 MR. EDWARDS: Well, that tourist
12 outfitter may say that and perhaps his views ought to
13 be -- his or her views ought to be taken into account.

14 My point, sir, is that many of the
15 conflicts which exist could be minimized, mitigated,
16 perhaps eliminated if the conflict over the need for
17 timber and the rights to use the road were met by
18 larger buffer zones and I would like to know what their
19 view is of the types of reserves that might be
20 necessary.

21 THE CHAIRMAN: How do you get rid of the
22 conflict in the sense that the timber companies want
23 the wood and if they are prevented from having the wood
24 because there is going to be no roads whatsoever, you
25 may make the tourist operators happy but you are not

1 going to make the timber companies happy.

2 There is still going to be a conflict.

3 It may not be over a road, per se, but it will be over
4 the fact that they can't access wood that they feel
5 should be accessed while, at the same time, affording
6 some protection to tourist values.

7 MR. EDWARDS: Mr. Chairman, I think it's
8 a matter of degree in shades of gray. Nobody is
9 suggesting no roads, and nobody is suggesting harvest
10 no timber.

11 I do think it's a fair question of the
12 witness to get his view as to what type of reserve
13 might diminish the conflict. How much wood do you have
14 to give up to get rid of this user conflict.

15 I think that's a fair question, with respect.

16 MR. FREIDIN: I think he's got the
17 answer. His answer is that it depends on the fact
18 situation at hand and he has to find out what the input
19 of the stakeholders is, which I would submit is
20 consistent with the position of the Ministry which has
21 been clear since probably Panel 1 when we talked about
22 this very issue.

23 THE CHAIRMAN: I mean, if you are asking,
24 Mr. Edwards, is there some general rule that is going
25 to satisfy your concern in that regard, I would

1 suggest - unless the witnesses want to say something
2 different - that there is no general rule, it really
3 depends on the situation.

4 MR. EDWARDS: That's exactly what I was
5 about to head into, Mr. Chairman. I wanted to give an
6 example and ask with very specific facts and see if Mr.
7 Tenaglia can respond to the specifics. As a general
8 question, I agree, it's impossible to answer. I may...

9 MS. BLASTORAH: Mr. Chairman, I only rise
10 because I don't know -- I think we seem to be all in
11 agreement that it has to be decided on a case-specific
12 basis and how a decision would be made in any
13 particular instance, I don't really see how helpful
14 that is to the Board to put one fact situation and say:
15 Well, this is what we do in that case.

16 THE CHAIRMAN: Well, rather than go
17 through the example, Mr. Edwards, could we ask the
18 witnesses the following: Would you ever make a
19 decision as to whatever the buffer zone would be or the
20 reserve without attempting to get input from those who
21 would be impacted?

22 MR. TENAGLIA: It hasn't been my
23 experience that we would make a unilateral decision
24 like that without fairly extensive consultation.

25 THE CHAIRMAN: And, therefore, wouldn't

1 that govern whatever would be done in a particular
2 situation?

3 MR. EDWARDS: Mr. Chairman, I would think
4 that if they have no idea or are unable to answer that
5 type of question, I think they would have difficulty
6 dealing with the specifics in the field.

7 If they are unable to speak abstractly
8 about what they would do with a set of variables - and
9 you can change the variables; slope, soil conditions,
10 type of timber - I would think it would be very
11 difficult for them to consider the request. So I think
12 it's fair a question to put to this witness.

13 THE CHAIRMAN: But with respect, Mr.
14 Edwards, unless I am missing something, the Ministry
15 appears to have moved away from a straight line
16 approach where there is a fixed reserve and is going to
17 a more flexible approach whereby those reserves can
18 either be increased or decreased depending on the
19 circumstances.

20 And, accordingly, if the procedure is to
21 try and get input so as to decide what the size of any
22 reserve should or should not be, it really depends on
23 what that input is and it's very difficult to talk in
24 the abstract in the sense that there is no fixed
25 reserve of a straight line approach that they are now

1 relying on.

2 MR. EDWARDS: Mr. Chairman, with respect,
3 if I might just attempt to make this point once again.

4 I think it is a fair question to put to a
5 witness asking that witness how much of a buffer a
6 designated tourism lake would need to protect it from
7 the type of use which comes with close road access;
8 that is to say, how far away does the road have to be
9 before the amount of traffic to that lake, however it
10 gets there, is so minimal that it's just really
11 traditional use, people carrying in or walking in and
12 that is no problem.

13 How much of a buffer, how much of a
14 protection does the lake need before there will be
15 any -- there will be no impact whatsoever and at what
16 stage, how close can you come, how close can you cut
17 before you start having impact.

18 THE CHAIRMAN: So what you are saying in
19 effect, if I understand, your position is, is that: In
20 your view, there should be some kind of minimum reserve
21 and you are asking these witnesses what that minimum
22 reserve should be.

23 MR. EDWARDS: I'm asking them if they
24 have a view as to what minimum reserve would be
25 necessary to eliminate the user conflicts.

1 If you build a road close to a designated
2 tourism lake you are going to have a lot of traffic to
3 it. At some stage if the road is perhaps 500 metres,
4 maybe a thousand metres away - I don't know what the
5 figure is - at some stage the use by the general public
6 is just going to be the traditional use. At some stage
7 people are going to have to lug their boat and they're
8 not going to go and drive to the shore as they can if
9 the road is right there.

10 And I'm wondering if these people can
11 tell us, from a tourism viewpoint, what they think
12 would be necessary to protect it, because the reason
13 that I think that is important is that it will tend to
14 eliminate the user conflicts.

15 How much wood do you have to give up to
16 start mitigating or minimizing user conflicts.

17 MS. BLASTORAH: Well, Mr. Chairman, again
18 I am not trying to be disruptive, but we have heard
19 extensive evidence that these decisions have to be made
20 on a site-specific basis. And, I mean, the wood is
21 going to be different in every case, the lodge is going
22 to be different in every case, the terrain is going to
23 be different in every case.

24 So how Mr. Edwards can ask the witness to
25 give a minimum distance that is going to apply in all

1 cases, we have heard extensive evidence --

2 THE CHAIRMAN: Well, okay. Without going
3 through all that evidence, let's allow the question to
4 be put to the panel. Is there a minimum distance in
5 accordance with Mr. Edwards' last question that you
6 would feel appropriate--

7 MR. EDWARDS: Mr. Chairman--

8 THE CHAIRMAN: --to protect tourism
9 values?

10 MR. EDWARDS: --could I put some
11 conditions on that so that it's easier for the
12 witnesses to answer.

13 THE CHAIRMAN: Okay.

14 MR. EDWARDS: Q. Sir, assume a flat --
15 relatively flat shoreline so there is no skyline
16 reserve condition, 0 to 15 per cent grade, good soils,
17 jack pine timber, the usual fishery concerns; that is
18 to say, 30 metres from the Timber Management Guidelines
19 for the Protection of Fish Habitat.

20 To minimize the likelihood of user
21 conflict in those circumstances, do you have any views
22 as to how far away from the shoreline of that waterbody
23 a road should be?

24 MR. TENAGLIA: A. That is a very simple
25 scenario and I wish all scenarios were that simple,

1 that we don't have any other interest groups interested
2 in roads and using those particular roads.

3 Q. Does it have a simple answer?

4 A. No, it doesn't.

5 Q. Do you have any views, sir, as to
6 what might be appropriate in the circumstances? Have
7 you considered that?

8 A. A primary road, a secondary road, a
9 tertiary road?

10 Q. Any road.

11 A. Any road.

12 Q. Yes?

13 A. An outpost camp, main base lodge
14 camp?

15 Q. Main base lodge.

16 A. A road accessible camp?

17 Q. Obviously not a road accessible camp.

18 A. That particular operation may want --
19 he may have some particular interest in having a road
20 near his camp. We have to take that into
21 consideration.

22 Q. Sir, have you ever considered what I
23 am suggesting as a possible management option; that is
24 to say, staying further away from tourism lakes to
25 manage the user conflict?

1 A. Yes we have, and we also have
2 considered putting the road closer to the lake if we
3 have to for operational reasons and minimizing the
4 potential conflicts by using signs or gates.

5 Q. All right. If you have considered
6 that possible option, whatever your answer might be to
7 that question, do you think it should be used from time
8 to time?

9 A. If we don't use other mitigating
10 measures, sure, keeping the road further away from the
11 lake will minimize that potential impact or the
12 potential access to the lake.

13 MR. WARD: A. One of the problems, Mr.
14 Edwards, with trying to come up with a certain distance
15 to make it difficult for people for accessing the lake,
16 which is your question, is that most lakes have inlets
17 and outlets and roads have to cross them and you will
18 find that a lot of access points are on those creeks,
19 either the outlet or the inlet of the lake. So you can
20 have, you know, a half a mile reserve on it, but they
21 can still get access to that lake because the road has
22 to cross the creek somewhere.

23 And the other thing is that technology is
24 changing all the time. People now have these
25 all-terrain vehicles that can pull in boats, where

1 before you maybe figured that a certain amount of
2 timber would restrict -- make it difficult for people
3 to get in there and you would only get the real ardent
4 angler to access a lake. Now, almost anybody with a
5 four-wheeled ATV can get into a lake.

6 So it's very difficult to come up with a
7 certain amount of timber that you need to prevent
8 access to a lake and that is because of changing
9 technology and because of the topography of the
10 situation and that is why a lot of these things have to
11 be on a site-by-site decision.

12 Q. Is it a management tool which can
13 assist in certain circumstances?

14 A. I think there is -- it is a
15 management tool and I think in places like in the Lac
16 Seul Timber Management Plan we have no roads I think
17 within 600 metres of the lake, or if there is a
18 tertiary road within it, it goes through a trap -- a
19 natural trap, like a wetland or something or across a
20 creek where you can remove a culvert so that there
21 isn't any permanent road in place once the timber
22 harvesting and renewal operations are over.

23 So we do have that and there are examples
24 in timber management plans where we have talked about
25 access restrictions that way and I am sure there are

1 other examples the panel can think of as well.

2 Q. Mr. Tenaglia, is it your evidence,
3 sir, that the area of concern planning process,
4 particularly as it relates to roads, would protect
5 potential tourism resources?

6 MR. TENAGLIA: A. If the potential --
7 yes, if they are identified.

8 Q. So it would not be necessary to have
9 an actual existing outpost or main base lodge on a
10 waterbody for that waterbody to be considered in the
11 area of concern planning process?

12 A. Yes, that is possible. Again, it
13 depends on any other user's interests. There may be a
14 strong interest in accessing those lakes if outpost
15 camps are not established on those lakes.

16 MR. PYZER: A. Just one minute, Mr.
17 Edwards. If I might as well, that's the reason for
18 Ministry of Tourism and Recreation representative
19 sitting on all of the timber management plans that we
20 are doing in areas with tourism, both to identify
21 existing tourism values, but one of their key roles is
22 to identify those potentials.

23 Q. So to get this very straight, it's
24 not necessary to have the lake identified in the
25 district land use guidelines for it to be considered in

1 the area of concern planning process?

2 A. That's correct.

3 Q. Thank you. Asking a bit more
4 specific version of a question I put, I believe Mr.
5 Hogg responded to it earlier. The use management
6 strategy of a road can be used to protect a moose herd;
7 is that correct, Mr. Hogg?

8 MR. HOGG: A. I think to use some words
9 Mr. Tenaglia used, theoretically but not practically.
10 We don't see a use management strategy as being
11 particularly effective at determining the number of
12 moose killed in a wildlife management unit, so we don't
13 manage on that basis, we don't manage by manipulating
14 the use of roads to meet our provincial objectives.

15 Q. When a road or a new road is pushed
16 into an area and cutting commences, would you agree
17 with me that the existing moose herd in that immediate
18 area may be exposed to a very high hunting pressure and
19 resulting significant kill?

20 A. I would agree that they are more
21 vulnerable, in that improved access mean more people in
22 that specific local area and you can expect a higher
23 kill in a local area.

24 Q. Once the cover is removed they are
25 exposed and they are easy game for the first year or

1 two?

2 A. That traditionally has been the case.

3 But to make the point again, we don't manage moose at
4 the end of the road, we manage across an entire
5 wildlife management unit.

6 And so the fact that there is a locally
7 heavy harvest of moose occurring in one locale within
8 that larger unit in the general case, and it's our
9 experience that in other parts of that wildlife
10 management unit access is decreasing, in the sense of
11 roads are going in, habitat is growing, moose cover is
12 increasing, so that the kill of moose in those other
13 locales is declining, so overall there is a balance of
14 a sort there and we assess the success of our moose
15 management again at the wildlife management unit level.
16 We drew population inventories at that level, we
17 manipulate the number of moose tags issued at that
18 level and we don't issue them for a small area within
19 the unit, we don't issue them in an area at the end of
20 the road.

21 Q. Sir, are you suggesting that on an
22 annual basis the number of roads going out of
23 commission would equal the number of roads going into
24 commission?

25 A. I can't obviously say that in a

1 specific way, but let others on the panel speak to what
2 happens after renewal efforts and the forest is growing
3 and the tertiary roads are no longer as passable as
4 they were, that is the scenario I am trying to
5 describe.

6 Q. You are describing a scenario of some
7 roads going out of commission and some new roads being
8 built. But surely you would agree that throughout a
9 particular management unit the total number of
10 kilometres of road would be increasing annually?

11 A. Over time you would expect more roads
12 to be appearing in a unit, yes.

13 Q. Now, the wildlife management unit may
14 involve many forest management units; is that correct?

15 A. That's correct, several anyway.

16 MR. EDWARDS: If I might just have a
17 moment please, Mr. Chairman.

18 Q. Mr. Hogg, would it be your evidence
19 that the effects of road access on wildlife -- I
20 understand that you testified that the effects of road
21 access on wildlife habitat would be small, but the
22 subsequent harvest operation obviously is a major
23 impact on the habitat. I trust you agree with that?

24 MR. HOGG: A. Yes.

25 Q. Now, when that habitat is impacted,

1 will there be a major impact on the moose population in
2 the immediate area of the cutting in the year
3 following?

4 A. Are you speaking in terms of habitat
5 now or perhaps the hunting side of it?

6 Q. I'm speaking in terms of the number
7 of moose that are going to be around for whatever
8 reason the following year.

9 A. Well, taking hunting into
10 consideration, moose in that scenario of a harvested
11 forest, are going to be more vulnerable to hunting.

12 I think we acknowledge that and there's
13 some papers written about it, and so we can expect some
14 kind of decline in the years following cutting,
15 immediately following cutting. We are looking over the
16 longer term obviously at an improvement in the moose
17 population because, as Dr. Euler went on at some length
18 about it in Panel 10, moose are an animal of the
19 disturbance forest, they need that disturbance to
20 produce young vegetation, to produce the kind of
21 habitat that they are best suited to. So harvest in
22 the medium and long term will have a positive effect on
23 a moose population.

24 Q. Do you agree that in certain
25 circumstances, to reduce hunting pressure, measures may

1 need to be taken to limit vehicle use on access roads?

2 A. No, I think my evidence has been and
3 it's the Ministry position that a road -- road use, per
4 se, is not the means of which we manage moose harvest
5 in the province. We use the tag system and not road
6 closures.

7 Q. Would you agree with the statement in
8 the Timber Management Guidelines for the Protection
9 of -- pardon me, for the Provision of Moose Habitat,
10 with the following statement at page (ii), the green
11 summary:

12 "If it is desirable in special
13 circumstances to reduce hunting pressure,
14 one may carefully consider access road
15 location and measures to limit vehicle
16 use (eg. winter extraction, the
17 signing of roads or the scarification and
18 removal of roads after timber
19 operations)."

20 Do you agree with that proposition from
21 these timber management guidelines?

22 A. Certainly those words are there, but
23 those words are meant to address those situations where
24 there is a conflict, an obvious conflict such as a
25 native interest or perhaps a tourism interest, the kind

1 of interest your clients might have.

2 Q. Ah, thank you. So would you agree
3 that the interest of native persons or the interest of
4 existing tourism businesses in an area may constitute
5 special circumstances?

6 A. Yes, it could.

7 Q. Thank you.

8 MR. EDWARDS: Mr. Chairman, would you
9 consider a 10-minute break at this juncture?

10 THE CHAIRMAN: Why don't we take the
11 morning break at this point, if that's okay. We will
12 take 20 minutes.

13 Thank you.

14 MR. EDWARDS: Thank you.

15 ---Recess taken at 9:45 a.m.

16 ---On resuming at 10:15 a.m.

17 THE CHAIRMAN: Thank you. Be seated,
18 please.

19 MR. EDWARDS: Mr. Chairman, during the
20 break I had copies of that map and additional copies of
21 the exhibit -- the letter of June, 1989 made, and I
22 have given the original map to Dr. Quinney for a few
23 minutes. He is about to retrace the pink and red lines
24 onto his copy and then I would file the original as the
25 original exhibit.

1 THE CHAIRMAN: Okay.

2 MR. EDWARDS: Q. Just a couple of
3 further questions, Mr. Tenaglia, relating to use
4 management strategy with respect to roads, particularly
5 in the Wawa District. Is it permissible to use road
6 restrictions as a tool in moose management in the Wawa
7 District?

8 MR. TENAGLIA: A. We have used road
9 restrictions to minimize the conflict between road
10 hunters and the remote-based operations.

11 Q. However, is it possible to use them
12 in special circumstances to reduce hunting pressure in
13 the Wawa District?

14 A. Well, I believe Mr. Hogg spoke to
15 that and it would apply in Wawa District in special
16 circumstances.

17 Q. I see. So if you and I had been at a
18 meeting on August 10th of this year where it was stated
19 that road restrictions are not to be construed as a
20 tool in moose management in the Wawa District, that
21 would not be a correct statement?

22 MS. BLASTORAH: Mr. Chairman, we have
23 already heard from Mr. Hogg a number of times that
24 there's a distinction between using roads as moose
25 management and using roads for tools in protecting

1 moose herds. And so I think we have heard that a
2 number of times already this morning, as well as the
3 evidence of Dr. Euler.

4 THE CHAIRMAN: Well, we've heard that,
5 but we've also heard from Mr. Tenaglia that, in his
6 opinion, you can use road restrictions to minimize the
7 conflict between various users.

8 MS. BLASTORAH: Mr. Chairman, exactly.
9 My only point was that what Mr. Edwards has just asked
10 Mr. Tenaglia, he has stated it as using roads for moose
11 management, and that was not the response of either Mr.
12 Hogg or Mr. Tenaglia. They made that distinction that
13 I just made between moose management and using it for
14 other purposes in relation to moose.

15 MR. EDWARDS: With respect, I believe
16 there is a matter which needs to be clarified here and
17 I would like to pursue this a bit further.

18 THE CHAIRMAN: Very well.

19 MR. EDWARDS: Q. Mr. Tenaglia, I trust
20 that you agree with the page in the Guidelines for the
21 Provision of Moose Habitat which states that:

22 "In special circumstances, to reduce
23 hunting pressure one may carefully
24 consider access road location and
25 measures to limit vehicle use (eg.

4 Is that correct?

5 MS. BLASTORAH: Do you have copy of that
6 exhibit?

7 MR. TENAGLIA: Yes.

8 MR. EDWARDS: Q. Would you agree with
9 that--

10 MR. TENAGLIA: A. Yes. I would agree.

11 Q. --statement from the moose
12 guidelines? Is the signing of a road a restriction on
13 the road?

14 A. Yes, it is.

15 Q. And is it permissible as a result of
16 this document, the moose guidelines, to use road
17 restrictions as a tool in moose management?

18 A. Yes, it is.

19 Q. So if it was stated at that meeting
20 that that was not possible, that would not be correct?

21 A. I'd have to check those minutes again
22 to see how it was stated.

23 MR. HOGG: A. Mr. Edwards, I wonder if I
24 might jump back into the fray here for a second to
25 clarify something I think has been confused here a

1 little bit and; that is, that we do not see the
2 manipulation of roads as a game management strategy.
3 It's a use management strategy, it reduces conflict
4 between users and that's the way we see road
5 restrictions being put in place.

6 As a game management strategy,
7 manipulation of roads tends to be ineffective because
8 you can close a road, you can put a gate on it, perhaps
9 you may not even put it there in the first place, but
10 people will still continue to hunt in the area. They
11 make their way to that area by whatever means they can,
12 by canoe, by walking or whatever ways. The hunt
13 continues no matter what has happened to the road.

14 So that is what has led us to what we
15 have called the selective harvest system in the
16 province and this idea of determining the appropriate
17 number of bull and cow tags to allocate to an area
18 thereby limiting the kill of moose in that area.

19 So in reading the moose guidelines in the
20 section we have talked of, and it talks about hunting
21 pressure, that section in my mind refers to the
22 situation of conflict amongst users and recognition the
23 that there is obviously a link between the number of
24 people in an area and perhaps the number of animals
25 that are going to be shot, but this section is really

1 meant to address that one of conflict amongst users and
2 the idea that appropriate use management strategies
3 should be implemented where those conflicts arise.

4 Does that help or does that confuse
5 things more?

6 Q. I think that helps somewhat, Mr.
7 Hogg, but you're not taking back your previous
8 statement that in special circumstances the moose
9 management strategy can be used to reduce hunting
10 pressure, special circumstances such as concerns of
11 native persons or the concerns of tourist outfitters?

12 A. If we can agree that hunting pressure
13 equates with that conflict in the instance we are
14 talking about here as opposed to moose management.

15 MR. TENAGLIA: A. And on that note I
16 would have to agree with those minutes where the unit
17 forester stated that the road restrictions are not to
18 be construed as a tool in moose management and it goes
19 on to say that:

20 "...and in fact in Wawa District we have
21 used extensive use of signs and gates to
22 reduce the conflict of road hunters and
23 tourist operations."

24 Q. But nobody on this panel --

25 A. And I guess the benefits of those use

1 restrictions -- the indirect benefit is to the moose
2 herd.

3 Q. Right. So nobody on the panel is
4 withdrawing from the provision -- the position that one
5 may use that to reduce hunting pressure; you still
6 agree with that?

7 MR. HOGG: A. If we can all agree that
8 hunting pressure equates with this idea of conflict
9 amongst users.

10 Q. I'm certain it does, but would you
11 agree that you may use it to reduce hunting pressure?

12 MS. BLASTORAH: Mr. Chairman --

13 THE CHAIRMAN: As opposed to a tool for
14 moose management?

15 MR. HOGG: Yes, Mr. Chairman.

16 MR. EDWARDS: It may be a distinction
17 without a difference, but I think the point is that it
18 can be used for -- the point is well made and I will
19 move on.

20 Q. Mr. Tenaglia, just dealing with the
21 issue of gates, you gave some of your experience in the
22 Nipigon District with the imposition of gates.

23 Would you agree with me, sir, that gates
24 and the closure of roads are not the first and
25 preferred option of tourist outfitters who will hope to

1 protect their businesses?

2 Would you agree with me that they would
3 prefer that some other management strategy could be
4 devised to protect their businesses which did not
5 involve restricting public access?

6 MR. TENAGLIA: A. Yes, I would agree
7 with you and I certainly have heard members of NOTOA
8 indicate to me that their preference is to eliminate
9 gates and just use signs.

10 Q. Have you also heard it suggested that
11 they would prefer other use management strategies
12 besides road restriction?

13 A. Such as no cutting?

14 Q. Such as larger buffer zones?

15 A. Oh, I've always heard that, yes.

16 Q. And that's the preferred option. The
17 restriction of the public is a secondary position; is
18 it not?

19 A. Can you repeat your question? How's
20 that?

21 Q. The preferred option, in your
22 experience, from the tourist outfitters' point of view
23 has been to have sufficiently decent buffer zones that
24 the conflict is minimized or neutralized; would you
25 agree with that?

1 A. No, I think that philosophy or that
2 thinking is changing. I think a lot of members of
3 NOTOA are starting to think: Well, they are not the
4 only users of the forest and they have to work with the
5 forest industry, and that's certainly the position of
6 some of the outfitters in Wawa District, that with
7 proper forest management, with proper controls that
8 both industries can survive.

9 Q. But would you agree that the position
10 of accepting or advocating gates and signs is one which
11 has been adopted reluctantly by the tourist outfitters
12 you've dealt with?

13 Mr. Pyzer, would you agree with that,
14 sir?

15 MR. PYZER: A. Yes, I would.

16 Q. Now --

17 MR. FREIDIN: Mr. Chairman, just for my
18 clarification, when we're talking about buffer in this
19 case I assume we're talking about the distance from the
20 road to the lake.

21 THE CHAIRMAN: Reserves.

22 MR. EDWARDS: Mr. Freidin has put it more
23 eloquently than I could, he has hit the nail on the
24 head.

25 MR. FREIDIN: I just want to make sure

1 that's what we're talking about, because that word has
2 been used in many contexts and I just wanted to
3 understand. Thank you.

4 MR. TENAGLIA: So, Mr. Edwards, your
5 interpretation of buffer is a no harvest around a lake,
6 or just a restriction on how close the road can go to a
7 lake?

8 MR. EDWARDS: Q. The question was -- .

9 MR. TENAGLIA: A. For example --

10 Q. The question, sir, was put in the
11 sense of how close the road could go to the lake.

12 A. And can there be any harvesting from
13 the road -- between the road and the lake?

14 Q. Have you heard that position from
15 tourist outfitters, sir, that they have no objection --

16 A. No, I just want to try to clarify, as
17 Mr. Freidin was trying to clarify, the interpretation
18 of a buffer. Is the buffer no harvesting or no roads
19 and no harvesting around a lake?

20 Q. In particular circumstances, either.
21 So does that affect the answer in any way, sir?

22 A. No.

23 Q. Now, no less a person than Dr. Osborn
24 told us that the same amount of wood fiber could be
25 produced on a smaller land base than used at present -

1 I believe I'm not misquoting him - that is to say, with
2 the advances in forestry and silviculture one may
3 indeed be able in future to produce more fiber per
4 acre.

5 Does that, Mr. Tenaglia, strike you as
6 any sort of reason to pursue a use management strategy
7 which uses buffers or reserves, whatever you wish to
8 call them, and de-emphasizes gates and signing?

9 MR. TENAGLIA: A. That depends on the
10 land base that you're working with and how productive
11 that land base is. The principle is sound, with more
12 intensive forest management you can supply the industry
13 with the same amount of wood on a smaller land base
14 through intensive forest management.

15 Q. Thank you.

16 A. But on a per unit basis one would
17 have to look at the specific sites and see whether you
18 can work and increase or maintain that level of
19 productivity on a smaller land base.

20 Q. Mr. Tenaglia, if I may switch to a
21 different area. I know your explanation of the timber
22 management planning process took into account that most
23 of the planning discussion would be with respect to
24 Panel 15 and you gave more or less a brief outline in
25 your evidence-in-chief, nevertheless, I would like to

1 ask you a few specific questions which I think properly
2 arise out of your evidence-in-chief.

3 Is there any reason that representatives
4 of other industries or in particular interest to my
5 client; that is to say, the tourist industry, cannot be
6 on the timber management planning team?

7 A. I think that's a question for Panel
8 15.

9 Q. Well, I guess I'll ask it in Panel
10 15, I certainly intend to. Why is the role of the MTR
11 only advisory?

12 A. Again, I think that's a question for
13 Panel 15, but I think Mr. Pyzer wants to speak of that.

14 MR. PYZER: A. Clearly it's Ministry of
15 Natural Resources timber management plan that's being
16 prepared and the reason for that was - and there were
17 some discussions certainly at the Deputy Minister
18 level - is that -- and it was that whole question of:
19 If one person doesn't agree, what are the mechanisms
20 of -- could that stop the entire timber management
21 planning process, and if he's not an advisor, the same
22 as all other people on the planning team.

23 Clearly there can only be one
24 decision-maker and that is the district manager or the
25 regional director or the director of timber sales, and

1 so from the perspective of all team members being
2 advisors, as opposed to having two decision-makers,
3 that was the reason for that.

4 Clearly if there was a difference of
5 opinion between the Ministry of Tourism and Rec person
6 and the Ministry of Natural Resources, that would go
7 through the normal channels and that would be a
8 deputy-to-deputy or minister-to-minister discussion,
9 but it reflects the point that there can only be one
10 decision-maker, you can't have two decision-makers.

11 Q. Any other reasons, sir?

12 A. None that I'm aware of.

13 Q. Is it your experience, Mr. Tenaglia,
14 that the MTR representative has the time and ability to
15 show up to attend at timber management planning
16 meetings, keeping in mind, as I understand it, that
17 they are -- an individual MTR rep may be responsible
18 for quite a number of plans, perhaps 10 to 12?

19 MR. TENAGLIA: A. In the planning
20 process in Wawa District it's my experience that they
21 have not had the time.

22 Q. With respect to Mr. Payne, who is the
23 MTR representative on the Magpie Timber Management
24 Plan, do you have any recollection as to how many
25 meetings Mr. Payne attended?

1 A. Could you repeat the question, sorry?

2 Q. With respect to the Magpie Timber
3 Management Plan, which has almost just been approved in
4 your district, how often did Mr. Payne attend? He was
5 the MTR rep.

6 A. He didn't attend any planning
7 meetings. He was kept advised through the minutes of
8 the meetings of what was taking place and he indicated
9 to me, verbally anyway, that he was satisfied with the
10 communications that were maintained.

11 Q. I see.

12 THE CHAIRMAN: Mr. Tenaglia, we realize
13 that this is getting into an area of Panel 15, but we
14 are prepared to let you go with a few of these
15 questions, Mr. Edwards, on the basis that you are
16 dealing with specific examples within the district that
17 this particular witness might be familiar with.

18 MR. EDWARDS: That's exactly why I raised
19 it, Mr. Chairman. I'm just about to move on to
20 tertiary roads which I think are centrally part of
21 Panel 14, at least according to the colourful chart I
22 have reviewed.

23 THE CHAIRMAN: Just one last question
24 based on the last two or three questions.

25 Regardless of whether somebody from MTR

1 shows up, is it your position that they are all
2 properly notified, they all have the opportunity and
3 right to show up and take an active part in the
4 management process -- in the planning process, and if
5 for some other reason they choose not to, whether it is
6 the pressures of other work or for some reason they are
7 satisfied just looking at written documentation instead
8 of showing up at the meetings, that doesn't in any way,
9 in your opinion, restrict their ability to do so if
10 they so wanted to?

11 MR. TENAGLIA: That's correct.

12 THE CHAIRMAN: And that goes for any
13 other members of the planning team; is that correct?

14 MR. TENAGLIA: That's correct.

15 THE CHAIRMAN: Is there any mandatory
16 requirement that these various members, other than ones
17 from your own Ministry, show up?

18 MR. TENAGLIA: No, there is no mandatory
19 requirement. We certainly may put out a verbal request
20 if there is a specific issue that we require their
21 expertise for to attend to address a specific issue,
22 but there is no mandatory requirement.

23 THE CHAIRMAN: Again, this is slightly
24 off topic but you may know the answer. Are you aware
25 if there has been any directives from the ministerial

1 level regarding the participation of other Ministry
2 personnel in these plans -- in the planning process,
3 the timber management planning process?

4 MR. TENAGLIA: I'm not aware of any.

5 MR. PYZER: If I understand the question,
6 ministerial directive to other than Ministry of Tourism
7 and Rec?

8 THE CHAIRMAN: In other words, if there
9 were a directive from, say, the Minister of Tourism to
10 his department, his ministry saying: I expect members
11 of the Ministry, the applicable members of the Ministry
12 to attend and take an active part in the timber
13 management planning process--

14 MR. PYZER: Yes.

15 THE CHAIRMAN: --presumably there would
16 be participation by those relevant members?

17 MR. PYZER: Yes, I'm fairly certain that
18 has occurred, if not at the Deputy Minister level
19 certainly at the executive coordinator level at main
20 office.

21 And the reason that I believe that's
22 occurred is that I have seen the correspondence from
23 the next level below that to the regional directors
24 indicating: Here are the people that I have appointed
25 in your region and in the various districts that will

1 be attending, and here are the people you should
2 contact for the various management units.

3 And, in fact, for the northwest region
4 that I'm most familiar with, we have a list from
5 Ministry of Tourism and Rec identifying for each
6 management plan the Ministry of Tourism and Recreation
7 consultant responsible for it.

8 THE CHAIRMAN: So it is not necessarily
9 up to the individual--

10 MR. PYZER: Oh, it's not up the
11 individual.

12 THE CHAIRMAN: --as to whether or not
13 they can find the time to attend these things?

14 MR. PYZER: Absolutely.

15 THE CHAIRMAN: They are basically under
16 an obligation, in your opinion, from their own Ministry
17 to take part?

18 MR. PYZER: Absolutely.

19 THE CHAIRMAN: Okay. Thank you.

20 MR. EDWARDS: Q. Just one question
21 arising out of the Chairman's question, Mr. Tenaglia.
22 Is it your understanding, sir, that the role of the MTR
23 representative is to assist in identifying tourism
24 concerns?

25 MR. TENAGLIA: A. Yes, it is. And I

1 believe certainly in the Magpie Forest that was
2 identified in terms of reference for the planning team.

3 Q. Mr. Tenaglia, if I could turn, sir,
4 to your evidence respecting tertiary roads. If you
5 would like me to I can refer you to specific pages, but
6 I just intend to put it in this fashion.

7 I believe your evidence to have been it
8 was not possible to identify the specific location of
9 tertiary roads in advance. Do you recall that, or
10 would you care to have me cite the page to you?

11 It's at page 19758, if you care to review
12 that. Do you have the transcript?

13 A. Yes. One second, please

14 Q. 19758 of Volume 118. If I can direct
15 you to the question at line 5, sir, of page 19758. Do
16 you recall being asked this question and giving this
17 answer:

18 "Q. Why are the locations of tertiary
19 access roads not identified in the timber
20 management plan?

21 A. Well, tertiary roads are built for a
22 very short-term use. Again, as I
23 mentioned, one to five years with the
24 main objective of providing access for
25 the given year's harvest and

1 subsequent -- and possibly subsequent
2 renewal activities. They are
3 built immediately prior to the harvest
4 in the specific location and density of
5 the tertiary road is influenced by
6 the harvesting system and the terrain.
7 It's not practical to identify the
8 specific location of tertiary roads in
9 advance nor is it necessary."

10 Do you recall that answer?

11 MR. TENAGLIA: A. Yes, I do.

12 Q. Sir, with respect to identifying in
13 advance, is it possible to generally locate tertiary
14 roads on a planning map so that people looking at the
15 map can obtain some understanding of where they are
16 going to go?

17 A. During the five-year planning
18 process?

19 Q. During the five year...

20 A. The five-year term?

21 Q. Five-year term, yes.

22 A. No. As I indicated, it's not very
23 practical and it's almost impossible.

24 Q. Why is that, even in a general sense?

25 A. It's a physical thing of trying to

1 determine where that road can go. It's the
2 site-specific problems of where that tractor can put --
3 can put their blade down so a truck can go in there and
4 haul the wood out. It's a function of the kind of
5 harvesting equipment that you have.

6 MR. PYZER: A. Mr. Edwards, sorry, just
7 to interrupt too because I heard your question somewhat
8 differently.

9 In a general sense -- I would say in a
10 general sense you do know where they would be insofar
11 as you know where they won't be. And if you know where
12 they won't be because of restrictions and protection of
13 other values and whatever, all of that area within
14 which there are no concerns.

15 So from a general perspective I would say
16 you do know where they are going to be, they are going
17 be in those areas where there were no areas of concern
18 and where there were no other values and where they are
19 not restricted.

20 So from that perspective I would have
21 said, yes, in a general sense you do know where they
22 will be.

23 Q. In a general sense then is it not
24 possible to so indicate on a map?

25 A. Well, then I would say no.

1 Q. Why is that?

2 A. And I will let Mr. Tenaglia...

3 Q. Why is it not possible to indicate
4 them in the annual work plan?

5 MR. TENAGLIA: A. Again, as I indicated
6 in my direct evidence, it's really a function of the
7 operator, the tractor driver, the foreman, the cut
8 foreman who is going to be able to determine where the
9 tertiary road is going to be located; that is again,
10 with the exception of in areas of concern.

11 Q. Sir, sometimes tertiary roads can be
12 quite lengthy?

13 A. How lengthy is lengthy -- quite
14 lengthy?

15 Q. Several kilometres.

16 A. It's possible.

17 Q. Yes. So is it not possible, in a
18 general sense, on an annual work plan at least to
19 indicate where the road is likely to go?

20 A. No.

21 Q. In your view does that have an impact
22 on the ability of the public to comment intelligently
23 about the implications of the timber management plan or
24 the annual work plan?

25 A. Well, the public will comment on the

1 areas of concern and any protection those areas of
2 concern should be afforded and we do address any
3 requirements of tertiary roads in the areas of concern.

4 Q. So it's your evidence today that it
5 is absolutely impossible to indicate, even in a general
6 sense, on an annual basis where the tertiary roads will
7 go?

8 MS. BLASTORAH: Mr. Chairman, he said
9 that about six times now.

10 MR. EDWARDS: I take that to be yes.

11 Q. Your Exhibit 694, where you drew in
12 the tertiary roads, we see the location of the tertiary
13 roads only after they are on the ground; is that
14 correct?

15 MR. TENAGLIA: A. Correct.

16 Q. And is it your theory that the
17 tertiary roads are not significant?

18 A. In areas of normal operations. They
19 can be very significant in areas of concern.

20 Q. They can be very significant; is that
21 your answer?

22 A. In areas of concern.

23 THE CHAIRMAN: Is not it a chicken and
24 egg argument or proposition, Mr. Edwards? The public
25 is given an opportunity to identify areas of concern

1 and if they have identified areas of concern then, as I
2 understand the evidence, tertiary roads or the proposed
3 location for tertiary roads will be laid out to take
4 into account those areas of concern.

5 If the public doesn't identify areas of
6 concern and it's a normal operating area, the tertiary
7 road will go in as the particular operator deems it
8 necessary, but the fact is that the public hasn't
9 identified any areas of concern within that normal
10 operating area.

11 And so what you are trying to say, in
12 effect, is: If you put in the roads or you tell the
13 public where the roads are going to be, then they might
14 identify an area of concern, but they have had that
15 opportunity at the front end; have they not?

16 MR. EDWARDS: Well, with respect, Mr.
17 Chairman, I think you can have roads that are
18 kilometres long, sometimes it's difficult to tell
19 exactly where they are going to go and one can only do
20 so much in a three-hour chance to review a plan and a
21 30-day period in which to make submissions and without
22 having the map drawn which indicates where these roads
23 are going to go, it's my submission that it makes it
24 very difficult for the average member of the public to
25 make any sort of useful comment other than saying:

1 Don't go too close to my lake or don't go too close to
2 this waterbody where I like to canoe or don't go too
3 close to this area which has significance to me as a
4 native person.

5 Those types of submissions can be made,
6 but without having the map, it's the position of my
7 client that it's very difficult to comment within the
8 time frames that are set out.

9 MR. TENAGLIA: Mr. Edwards, certainly the
10 public have the opportunity of reviewing where the
11 proposed allocations are and that's generally where the
12 tertiary roads are going to be, within the areas
13 allocated for harvesting, and I would suspect the
14 public will make that connection. And if they have any
15 concerns relative to harvesting, then it would still --
16 they would equally apply to tertiary roads.

17 THE CHAIRMAN: Isn't that really the
18 point, Mr. Tenaglia, that if the public is concerned
19 about roads they would first be concerned about
20 harvesting in the first place?

21 MR. TENAGLIA: That's correct.

22 THE CHAIRMAN: Because the harvesting is
23 going to be associated -- or sorry, the roads are going
24 to be associated with the harvesting. So that if it's
25 proposed that an allocation for wood harvest is going

1 to be in such and such a place, the public who would be
2 impacted by that harvesting would surely be interested
3 in identifying areas of concern within that allocation
4 area to the Ministry in their attempt to, if it were a
5 real concern, to prevent the harvesting in the first
6 place, let alone the building of a road.

7 Would that not be the case?

8 MR. EDWARDS: Well, if I might just ask,
9 Mr. Tenaglia.

10 Q. Sir, then there will be no
11 indication -- in the area of concern planning process,
12 there will be no indication whether a tertiary road is
13 going to go to the lakeshore or not?

14 MR. TENAGLIA: A. At what stage of the
15 planning process?

16 Q. At any stage, even in the annual work
17 schedule?

18 A. Of course. At a particular stage in
19 the planning process we will indicate what kind of
20 restriction will be in that -- relative to tertiary
21 roads, primary roads and secondary roads, what kind of
22 restrictions will be in that area of concern.

23 Q. Well, any member of the public who
24 views the plan at the public session will not -- will
25 know that there is an area of concern identified, one

1 hopes that would be marked on the map; would it?

2 A. Yes. At the public information
3 stage --

4 Q. Yes.

5 A. The second public participation
6 stage?

7 Q. Yes.

8 A. Yes.

9 Q. The area of concern would be marked
10 on the map, but as to what is going to happen inside
11 that area of concern, they wouldn't be able to see it
12 on the map, they will have to refer to the text?

13 A. At that stage of the planning
14 process, no, it won't be. At the third stage, where
15 the draft plan is prepared and available for public
16 review, that is where the public will be able to view
17 any restrictions on tertiary roads.

18 Q. And those restrictions will be
19 contained in the text, there won't be a map which
20 illustrates the location of the roads obviously?

21 A. That's correct.

22 Q. Now, sir, in your evidence you
23 indicated that it wasn't anticipated that the impact of
24 tertiary roads would be significant. Now today you
25 have said that tertiary roads may be significant in

1 areas of concern. So to that extent you have modified
2 your evidence-in-chief today?

3 A. No, I have not.

4 Q. Well, did you not say a few minutes
5 ago that tertiary roads can be significant in areas of
6 concern?

7 A. In areas of concern.

8 Q. All right. And in your
9 evidence-in-chief did you not say that it was not
10 anticipated that their impact will be significant?

11 A. Yes, because I guess we avoid the
12 areas of concern and we deal with the tertiary road
13 issues.

14 Q. Did you or did you not say that their
15 evidence -- that it's not anticipated that their impact
16 will be significant?

17 MR. FREIDIN: Where does it say that, Mr.
18 Edwards?

19 MR. EDWARDS: Q. Sir, were you asked at
20 page 19763 of the transcript --

21 MR. FREIDIN: That wasn't one of the
22 sections you referred him to earlier.

23 MR. EDWARDS: No, I am going to refer to
24 it right now.

25 Q. The question is at the bottom of

1 19763 and the question is merely a thank you.

2 Did you give the following answer at
3 question 19764:

4 "As I have explained before, tertiary
5 roads are very short term. In some cases
6 they are surfaced, in other cases they
7 are not surfaced. They are not
8 maintained -- generally not maintained
9 beyond the period of their use and, in
10 fact, in many cases they are reforested.

11 It's not anticipated that their impact
12 will be significant. For these reasons
13 we do not identify the location of the
14 tertiary roads but, again, we plan where
15 tertiary roads cannot go or any
16 conditions on tertiary roads."

17 THE CHAIRMAN: No, but doesn't that deal
18 with areas outside areas of concern?

19 MR. TENAGLIA: Yes, sir.

20 THE CHAIRMAN: And your evidence is
21 essentially that tertiary roads will not have a major
22 impact in a normal operating area given their nature.

23 MR. TENAGLIA: That's our submission,
24 sir.

25 THE CHAIRMAN: But they may have a more

1 major impact if it were associated with an area of
2 concern?

3 MR. TENAGLIA: That's right.

4 MR. EDWARDS: Q. Well, sir, as I read
5 your evidence on the first day I didn't see any
6 qualification that they may be significant in areas of
7 concern. Today you do agree; do you, that they may be
8 significant in areas of concern?

9 MR. TENAGLIA: A. I would have to check
10 the transcripts to make sure that I didn't leave that
11 out, that they are indeed significant in areas of
12 concern.

13 Q. Sir, I'm talking about today. You
14 just accept the point. Can we move on?

15 A. Yes.

16 Q. You do. Thank you.

17 Sir, your evidence with respect to
18 primary, secondary, or tertiary geometric standards --

19 MS. BLASTORAH: Mr. Chairman, we made it
20 clear during the evidence-in-chief that primary,
21 secondary and tertiary do not refer to geometric
22 standards, they are planning classifications of roads
23 which is something different from geometric standards.

24 The only reference that was made, I
25 believe was made by me in indicating that there was a

1 problem where primary, secondary and tertiary road --
2 or road standards are referred to in FMA agreements and
3 we clarified that that was particular to those
4 agreements and the witnesses would view primary,
5 secondary, tertiary only in reference to planning
6 classifications not geometric standards. That was made
7 quite clear.

8 MR. EDWARDS: With respect to Ms.
9 Blastorah's always courteous objections, I still think
10 the point is not clear, I find it very confusing, and I
11 would like to ask this witness what they mean about
12 geometric standards and what they mean about road
13 standards because the evidence, in my view, was not
14 clear and I would like to explore that briefly.

15 MS. BLASTORAH: I have no problem with
16 that, Mr. Chairman. I just wanted to clarify how the
17 terms were being used in the evidence-in-chief.

18 THE CHAIRMAN: Okay. Well, why don't you
19 put your questions, Mr. Edwards.

20 MR. EDWARDS: Thank you.

21 Q. Sir, when you are using -- do the
22 words primary, secondary and tertiary have two meanings
23 on different occasions? What is the difference
24 between a geometric standard and a road standard, if
25 any?

1 MR. FREIDIN: Is that a separate
2 question? Have you changed the question now, or do you
3 want him to answer that in the context --

4 MR. EDWARDS: I just want to ask
5 questions generally about what he means by primary,
6 secondary and tertiary and explain the difference
7 because it was not clear in the evidence-in-chief.

8 MR. FREIDIN: Well, there is two
9 questions: What is primary, second and tertiary, and
10 then: What is the difference between geometric
11 standards. I mean, if you are asking him to answer the
12 second question, assuming there is a difference -- I
13 mean, I think you should ask one question at a time,
14 Mr. Edwards.

15 MR. EDWARDS: I thought I said if any.

16 Q. Is there a difference, sir?

17 THE CHAIRMAN: Okay. Well, let's not go
18 through the semantics. What is the difference between
19 primary and tertiary and secondary?

20 MR. TENAGLIA: There is primary,
21 secondary and tertiary in terms of classifications for
22 planning processes and I believe that's addressed in
23 Document 4.

24 There is primary and secondary geometric
25 standards and it speaks to the parameters to which the

1 road is being built. I think Mr. Adamson may speak to
2 geometric standards if you are interested in speaking
3 about the parameters to which roads are being built.

4 MR. EDWARDS: Q. This is the
5 confusion --

6 MR. TENAGLIA: A. And geometric
7 standards are not a matter -- are not used in terms of
8 determining the planning classification or the
9 classification of the road.

10 Q. For geometric purposes are there just
11 primary and secondary, or are there primary, secondary
12 and tertiary?

13 A. There is primary, secondary -- there
14 is primary, secondary and tertiary standards.

15 Q. Geometric standards?

16 A. Geometric standards.

17 Q. Mr. Adamson, that is your
18 understanding; is it, sir?

19 MR. ADAMSON: A. We have three standards
20 in the Ministry and we go by letter A, B, C and D.

21 Q. Three standards and four letters.

22 A. To make it more confusing, yes.

23 Q. That's interesting.

24 A. There are a variety of expressions
25 used; main haul road is one, secondary road is commonly

1 used for geometry.

2 Primary and secondary roads are also used
3 to refer to geometry and, to make it more confusing,
4 the industry has their own geometric standards which
5 are different than the Ministry's standards, so...

6 But all they are is -- the word geometric
7 means that it has a certain geometry that can be
8 defined in numbers; road width, road slope,
9 right-of-way, a clearing width, those types of
10 parameters that are measurable.

11 THE CHAIRMAN: It was our understanding,
12 at least my understanding, that geometric standards
13 weren't really an issue with tertiary roads in terms of
14 private tertiary roads constructed by the industry?

15 MR. ADAMSON: That is quite correct.

16 THE CHAIRMAN: They were with respect to
17 secondary and primary roads.

18 MR. ADAMSON: That's right. Quite often
19 tertiary roads are unimproved surfaces of the natural
20 ground.

21 MR. EDWARDS: Q. This perhaps assists my
22 confusion. At page 781, Mr. Tenaglia, the bottom --
23 very bottom line, do you recall being asked a question
24 and giving the answer --

25 MS. BLASTORAH: I am sorry, what was that

1 page number?

2 MR. EDWARDS: 19781, pardon me.

3 Q. Being asked the following question
4 and giving the following answer:

5 "Q. And just in listing in those items,
6 Mr. Tenaglia, you indicated it would
7 normally indicate the road standard,
8 whether it was primary, secondary or
9 tertiary. Did you mean the road
10 classification for planning purposes, or
11 did you mean the standard as set out --
12 did you mean geometric standard? Because
13 you using primary, secondary and tertiary
14 but you also used the word standard?

15 A. It's the road standard that is
16 identified.

17 Q. The geometric standard?

18 A. Yes."

19 Do you recall being asked those questions
20 and giving those answers?

21 MR. TENAGLIA: A. Yes.

22 Q. Now --

23 MR. FREIDIN: I'm sorry, Mr. Edwards,
24 which page are you quoting from?

25 MR. EDWARDS: 19781 and 19782, Mr.

1 Freidin, start with the very bottom of 19781.

2 MR. FREIDIN: Oh, all right.

3 MR. EDWARDS: Q. Just to get this clear,
4 sir, do tertiary roads have geometric standards and was
5 that evidence clear on that point?

6 MR. TENAGLIA: A. Yes, I think Mr.
7 Adamson indicated that tertiary roads has -- a tertiary
8 road may have a geometric standard.

9 Q. It may have. Is that correct, Mr.
10 Adamson?

11 MR. ADAMSON: A. I think -- I don't
12 think there is a standard for tertiary road other than
13 a requirement to be able to haul a loaded truck of wood
14 over it.

15 Q. So in the usual use of the word
16 geometric standard, that would not refer to a tertiary
17 road?

18 A. That's correct. Our lowest standard
19 is a D and I believe a tertiary road would probably be
20 of lower standard than that even.

21 Q. So for the planning purpose, sir,
22 when in the planning process you are identifying
23 primary -- I am asking the question of Mr. Tenaglia,
24 but I will invite Mr. Adamson to help if he needs - in
25 the planning process, sir, when the primary or

1 secondary road is identified, does that have any
2 reference to the geometric standard to which the road
3 will be built.

4 MR. TENAGLIA: A. When it's identified
5 for what purpose?

6 Q. I am talking about the planning
7 process.

8 A. No, no. The geo -- it doesn't matter
9 what the geometric standard is.

10 Q. The important thing is the intended
11 use and duration of use of the road; is that correct?

12 A. That's correct.

13 Q. So it is theoretically possible to
14 have a primary road which is of a relatively lower
15 geometric standard or you could have a super highway?

16 A. That's correct. And I think I
17 indicated that in my direct evidence that in some cases
18 you may have winter roads or ice roads that are
19 secondary -- a secondary classification and you follow
20 the planning process for a secondary road even though
21 it has virtually no geometric standard.

22 Q. Can a tertiary road have a use
23 management strategy?

24 A. It may have a restriction put on
25 it -- a tertiary road in terms of planning

1 classification?

2 Q. Yes.

3 A. Or a geometric standard?

4 Q. Well, I thought we just agreed that
5 there weren't geometric standards for tertiary roads,
6 but I am talking about the planning process, yes.

7 A. There would be restrictions
8 identified on tertiary roads, yes.

9 Q. And that would constitute a use
10 management strategy for that tertiary road?

11 A. I guess it would be regarded as a use
12 management strategy. It's a restriction on a road.

13 Q. Mr. Adamson, is it a fair summary of
14 your evidence, sir, that -- a fair summary of what you
15 believe at least, that the location of bridges may be a
16 critical factor in determining overall road location.
17 Would you agree with that proposition?

18 MR. ADAMSON: A. Yes.

19 Q. And in your evidence you indicated
20 that there are certain sites which lend themselves more
21 easily to bridge construction than others?

22 A. That's right. I term them favourable
23 sites or unfavourable sites.

24 Q. And identification of favourable
25 sites at an early stage in the planning process is

1 critical to assist in planning out the entire route of
2 the road?

3 A. Yes, that's correct.

4 Q. The earlier the involvement of the
5 engineer, the better in the planning process?

6 A. In terms of location of the road,
7 that's correct. It doesn't necessarily have to be an
8 engineer, I should mention. Generally the people in
9 the industry responsible for bridge construction aren't
10 professional engineers.

11 Q. Generally people...?

12 A. In the forest industry who are
13 responsible for bridge construction and who can provide
14 that type of input are not professional engineers.

15 Q. What types of person would ordinarily
16 provide that type of expertise in your experience?

17 A. People that are experienced in the
18 construction of roads and bridges and culvert type
19 water crossings. They are quite -- through their
20 experience they are quite qualified to determine what
21 is a favourable site or an unfavourable site.

22 Q. I believe your evidence to have been,
23 sir, that it was important to involve engineers and
24 bridge construction people in decisions that select the
25 crossing locations during the five-year planning cycle.

1 Would you agree that those people have any role in the
2 20-year planning cycle?

3 A. I suppose they have a role, yes. If
4 the planning decisions as to where they are going to
5 cross a particular river are critical to that 20-year
6 plan, then advice could be sought from them, major
7 crossings could be checked out, that was the context.

8 Q. You gave some evidence, sir, in your
9 technical evidence about the portable bridge which can
10 be used and reused?

11 A. Yes.

12 Q. What is the cost of that relative --
13 is it possible to suggest relative costs for portable
14 bridges versus say permanent bridge installation?

15 A. Well, a portable bridge is
16 essentially -- what is portable, what can be salvaged
17 is the superstructure, the beams and the decking and
18 essentially what is involved is for a temporary
19 crossing perhaps investing more money in those
20 components recognizing that they can be taken out when
21 that particular need ends and they can reused somewhere
22 else.

23 So the initial cost would be higher, but
24 they have long-term life and they can be reused over
25 and over.

1 Q. Is there a potential cost saving in
2 the long run?

3 A. I believe so, yes.

4 Q. You also gave some evidence about use
5 of logs for small bridges and log culverts I believe.
6 When is it appropriate to use a log bridge?

7 A. Again, the use of log bridges is
8 permitted for structures that are going to be in place
9 for less than 10 years and that is set out in our
10 Bridge Management Policy.

11 Q. Are there any particular
12 environmental concerns with the use of log bridges?

13 A. I don't think there is a distinction
14 between the log bridge and the permanent material
15 bridge in terms of environmental concerns, no.

16 Q. Would a log bridge generally be less
17 expensive than a culvert?

18 A. It depends on the size of water
19 crossing being crossed. If a 4-foot diameter culvert
20 or a 5-foot diameter culvert can do the job, it's
21 probably more economical to use a culvert than a log
22 bridge. If two or three 10-foot diameter culverts are
23 needed, a log bridge may be more economical.

24 So it's site-specific, it depends on what
25 kind of flows have to pass through the structure, the

1 longevity required, the site conditions, the soils, the
2 foundations. So it's a site-specific decision.

3 Q. Thank you. Mr. Pyzer, sir, I just
4 wanted to draw to your attention something you stated
5 in your evidence-in-chief and I believe you may have
6 inadvertently misstated something and I just wanted to
7 give you the opportunity to review it.

8 Referring to your evidence at page
9 20017 --

10 MR. FREIDIN: Which volume?

11 MR. EDWARDS: I'm sorry, Volume 119.

12 Q. Do you have that page, Mr. Pyzer?

13 MR. PYZER: A. 20017?

14 Q. Right.

15 A. Yes, I do.

16 Q. It is actually the continuation of
17 your answer starting on the preceding page.

18 A. Yes.

19 Q. It talks about the benefits of the
20 Crown Land Camping Program and I'll just read briefly,
21 if I may. Your answer:

22 "The only other point I would make in
23 terms of the evaluation would be things
24 that we have done like Crown land
25 camping programs. Again -- in fact, the

1 Crown land camping program was an
2 initiative developed jointly between
3 NOTOA and our Ministry and, in fact,
4 our -- the northwest region and Kenora
5 District were the pilot program for
6 three years and as we went through that
7 in terms of monitoring, and I believe we
8 reflected that in NOTOA Interrogatory 32,
9 the impacts of that program, I believe it
10 was something in the order of the
11 magnitude of 82 or 85 per cent of the
12 tourist industry indicated a direct
13 relationship in terms of increased
14 business, and an improved business, and
15 an improved business climate as a result
16 of having put that in place."

17 Do you recall making that statement?

18 A. Yes, I do.

19 Q. Since you made that, sir, have you
20 had the opportunity to review the actual content of the
21 interrogatory?

22 A. No, I have not looked back at that
23 interrogatory.

24 Q. Could you just refer to it because I
25 think your figures were headed in the right direction

1 but perhaps you misstated them. It is NOTOA
2 Interrogatory 32.

3 A. Yes, I have that in front of me.

4 Q. Would you agree, sir, that the survey
5 indicated that 83 per cent had increased in experience
6 in business in 1985 of which 55 per cent attributed the
7 increase directly to the Crown land camping program?

8 A. That's correct.

9 Q. Now, if your evidence stated that 82
10 to 85 per cent indicated a direct relationship in terms
11 of increased business and improved business, would you
12 defer to the figures in the interrogatory?

13 A. Yes, that's correct.

14 Q. Yes. Now, just further to that 55
15 per cent, is that 55 per cent of the 83 per cent or is
16 that 55 per cent of the 100 per cent; do you know that?

17 A. Offhand I don't know that, I'd have
18 to check.

19 Q. But nevertheless your point would
20 still be that a significant number of outfitters found
21 benefit in the Crown land camping program?

22 A. That's correct, yes. In fact, I
23 believe that's why they then asked it to be expanded to
24 include all of northern Ontario.

25 Q. And that has now been done, I

1 understand?

2 A. That's correct.

3 THE CHAIRMAN: Mr. Edwards, I don't
4 believe Question 32 is in front of us.

5 MR. EDWARDS: I'm sorry.

6 MS. BLASTORAH: It's part of our Exhibit
7 No. 688, Mr. Chairman, which was the package of
8 interrogatories we filed.

9 THE CHAIRMAN: Okay.

10 MR. EDWARDS: I thought that had been
11 filed, Mr. Chairman.

12 MS. BLASTORAH: It was.

13 MR. EDWARDS: The significant part of
14 the -- just for the Board's reference, the significant
15 part is the one that I just read in which indicated
16 that 55 per cent attributed the increase directly to
17 Crown land camping programs and I think Mr. Pyzer
18 inadvertently said 82 to 85 per cent.

19 MR. PYZER: Yes, it was the 83 that
20 had -- 83 per cent had experienced an increase in
21 business.

22 MR. EDWARDS: Right.

23 MR. PYZER: And you're right, I'm not
24 certain if the 55 refers to 55 per cent of the 83 or 55
25 per cent of the 100. Of course 73 per cent also

1 perceived a positive reduction in the program in terms
2 of those other areas listed in the interrogatory.

3 MR. EDWARDS: Q. Mr. Pyzer, as I
4 understand your testimony, sir, it's that user
5 conflicts are resolvable ones, they can be dealt with
6 by the Ministry?

7 MR. PYZER: A. Yes, that's correct.

8 Q. I'm talking about user conflicts over
9 road use?

10 A. Yes. Some are obviously
11 significantly more difficult to resolve than others,
12 but given people willing to resolve them they can be
13 resolved.

14 Q. I don't know if you agreed to this
15 proposition earlier or not, but would you agree now
16 that it is harder to close a road after it has been
17 used for a few years by members of the public than it
18 is to close it in the first instance?

19 A. Yes, I would agree with that.

20 Q. And your understanding is that at
21 present six per cent of the roads constructed for
22 timber management purposes have some restrictions on
23 them?

24 A. I believe that was the figure, yes.
25 I certainly paged a number of districts across the

1 north in terms of the number of roads in their
2 districts that had restrictions of one sort or another,
3 a gate or a sign, and I'm on safe ground saying there
4 are dozens and dozens of examples. And I think I'm on
5 safe ground saying there are hundreds in northern
6 Ontario.

7 Q. But of the total the figure remains,
8 at last count, as six per cent?

9 A. Yes. I didn't put that figure
10 together, so I don't know if that's six per cent of the
11 mileage or six per cent of the roads or -- so I'm not
12 certain of the context.

13 Q. Do you know who would know that, sir?

14 A. No, I don't to be honest. I'd have
15 to find out who prepared that interrogatory.

16 MR. EDWARDS: Mr. Chairman, is that an
17 unreasonable undertaking, to ask what that figure
18 refers to?

19 MS. BLASTORAH: I am sorry, what is it
20 that he's trying to determine?

21 THE CHAIRMAN: He is trying to determine
22 who put together the answer that indicated that six per
23 cent of the roads have some sort of restriction on
24 them.

25 MS. BLASTORAH: My point is, I think Mr.

1 Edwards wants to know that to obtain some further
2 information. Maybe we could just undertake to find out
3 the information --

4 MR. EDWARDS: Specifically it's
5 whether -- are we talking about six per cent of the
6 kilometres or are we talking about six per cent of --
7 if there is 100 roads are there six with use
8 restrictions. Are we talking about kilometres or just
9 roads?

10 THE CHAIRMAN: I guess he wants to know
11 in what context was the number six per cent used.

12 MR. EDWARDS: How was six per cent used?

13 MS. BLASTORAH: If I understand the
14 question, it's six per cent of the number of roads or
15 six per cent of the total kilometre of roads?

16 MR. EDWARDS: I think the idea is right.

17 MS. BLASTORAH: Is that something we can
18 find out?

19 MR. PYZER: Well, again, I don't know to
20 be honest. It's fairly -- I would suspect it's a
21 fairly significant undertaking and that you would have
22 to go to the person who prepared the original to know
23 what data he has, but I certainly don't know.

24 MS. BLASTORAH: Mr. Chairman, perhaps we
25 could make some inquiries over the break and find out

1 whether we are able to provide an answer to that and we
2 can advise the Board.

3 MR. EDWARDS: Thank you very much, Ms.
4 Blastorah.

5 THE CHAIRMAN: Does anything turn on it,
6 Mr. Edwards?

7 MR. EDWARDS: Yes, I think something
8 does. I think the figure is a significant one and
9 we're very interested in finding out the answer.

10 MS. BLASTORAH: For what purpose, if I
11 may ask?

12 MR. EDWARDS: I was just about to go into
13 this line of questioning. For the purpose of dealing
14 with arguments that tourist outfitters want every road
15 in Ontario closed and that they're a bunch of effete
16 snobs who cater to the elite and refuse to let the
17 average member of the public go on the roads. It would
18 be the view of my clients --

19 THE CHAIRMAN: Is that your evidence?

20 MR. EDWARDS: No, absolutely not. It
21 would be the view of my clients that the use
22 restrictions which are in effect are not so terribly
23 widespread as to be unreasonable and, indeed, it would
24 be the view of my clients that further use restrictions
25 in the appropriate circumstances should be considered.

1 THE CHAIRMAN: Well, without going into
2 all of that, can we not sort of take notice of the fact
3 that if the figure is six per cent, whether it is of
4 kilometres or number of roads, it doesn't form a
5 majority in either case?

6 MR. ADAMSON: Mr. Chairman, I have the
7 interrogatory in front of me that that figure came
8 from. Perhaps if I read it it would help. It says --
9 it's in response to MOE Interrogatory No. 17 on Panel 8
10 and the question was:

11 "In the last three years what percentage
12 of new primary and secondary access roads
13 have been gated?"

14 And the answer:

15 "In the last three years approximately
16 six per cent of the primary and secondary
17 forest access roads which have been
18 constructed on forest management units on
19 Crown land for timber management purposes
20 have been closed to the general public."

21 THE CHAIRMAN: So it would appear to
22 refer to the number of roads constructed--

23 MR. ADAMSON: That's correct.

24 THE CHAIRMAN: --as opposed to
25 kilometres.

1 MR. ADAMSON: That's right.

2 MS. BLASTORAH: Mr. Chairman, if Mr.
3 Edwards' concern is with regard to this allegation
4 about his client, I don't think that allegation has
5 been made by anybody in this hearing, so I'm not quite
6 sure what he anticipates is going to be upcoming from
7 the other parties, but I think the interrogatory is
8 clear.

9 THE CHAIRMAN: Well, in any event, six
10 per cent of the number of roads constructed is not a
11 significant amount. I think we can take notice of
12 that.

13 MR. EDWARDS: Right. And I note that the
14 interrogatory asked for how many have been gated and
15 the response dealt in terms of roads that are closed,
16 and I just note for the record that that may mean
17 signed as opposed to gated. It may not have been
18 entirely responsive to the question. Was that --

19 MR. FREIDIN: That was the evidence of
20 Mr. Pyzer. The evidence of Mr. Pyzer was closed is
21 probably a word which is not used in the colloquial
22 sense all the time, that closed meant there was a
23 restriction on it, in some cases it does mean certain
24 people could pass, and he indicated in his evidence the
25 type of people who -- it was not uncommon by allowing

1 them to use those roads in terms of resource
2 harvesters, et cetera.

3 MR. ADAMSON: This point was clarified in
4 the interrogatory. If I can continue that same
5 paragraph, it says:

6 "Not: MNR's interpretation of your term
7 gated is closed to public use which
8 includes such measures as gating,
9 ditching and/or signage under the
10 authority of the Public Lands Act."

11 MR. EDWARDS: Thank you, that clarifies
12 that Mr. Adamson.

13 Q. Mr. Pyzer, is it a present policy of
14 the MNR in approving land use permits or approving new
15 developments for tourism to promote, for want of a
16 better word, the more ambitious project? If there are
17 two competing applications to put in a lodge or a camp
18 on a lake, the MNR tends to -- or has a present policy
19 of approving the more ambitious project?

20 MS. BLASTORAH: Mr. Chairman, before we
21 get into this, I would just, once again, ask what this
22 has to do with roads.

23 I mean, maybe if Mr. Edwards wants to
24 pursue this in relation to some specific issue with
25 regards to roads I may not have a problem with it, but

1 that -- what appears to be the line of questioning he
2 is entering into seems to my mind to be a more general
3 land use planning area that doesn't really relate to
4 the evidence of this panel, but I may be premature.

5 MR. EDWARDS: I think I'm going to take
6 it right back to roads in about 10 seconds, if I get an
7 answer here.

8 Q. Is that a present policy of the MNR,
9 sir, do you understand that to be the case?

10 MR. PYZER: A. I wouldn't say it's a
11 policy of the Ministry. We've worked closely with
12 Ministry of Tourism and Recreation and I wouldn't even
13 want to say it's their policy, but it's certainly one
14 that they have espoused that we should move closer to
15 the -- if a lake has the potential of an outpost camp
16 versus a main base lodge, they obviously, for social
17 and economic benefits and terms of optimizing resources
18 and optimizing benefits, that's a direction they would
19 like us to go in and we generally concur with that. We
20 agree with the benefits that flow from it.

21 Q. Would it be your view, sir, that a
22 person who invests time and energy and funds in such an
23 investment has a reasoned position in asking for some
24 use restrictions on roads which come near that
25 operation?

1 A. Is that a reasonable position for
2 them to take?

3 Q. Yes.

4 A. Absolutely.

5 Q. Thank you. Is it your experience
6 that the customers of tourist outfitters - and I
7 understand you from time to time are one yourself -
8 come from all walks of life?

9 A. I am sorry, I missed the last part.

10 Q. Come from all walks of life?

11 A. Yes, they do.

12 Q. Do you yourself regard tourist
13 outfitters as catering only to the elite?

14 A. No, I don't believe that at all.

15 Q. Sir, you're a professional witness
16 and earlier you gave --

17 THE CHAIRMAN: Professional in what
18 sense?

19 MR. FREIDIN: He has been qualified...

20 THE CHAIRMAN: If he stays here long
21 enough he may be.

22 MR. PYZER: It's the last thing I would
23 want to be.

24 THE CHAIRMAN: I think he's an employee
25 of MNR, I don't know if he does this for his lifetime's

1 ambition in terms of vocation.

2 MR. FREIDIN: He has to serve on five
3 panels to do that.

4 MS. BLASTORAH: Actually it's been done.

5 MR. EDWARDS: Going to nominate them for
6 witness of the year.

7 Q. Sir, you are a professional person,
8 you gave testimony which was quite anecdotal in your
9 evidence-in-chief for accounting what certain
10 individuals had said to you with respect to road
11 access.

12 Surely you acknowledge that you have had
13 earfulls from outfitters who feel that road access is
14 the major problem facing them, and there's no doubt
15 about that position; is there?

16 MR. PYZER: A. No doubt at all. That
17 was the point I was trying to make, is whatever
18 argument you would like to prove, I'm sure you could
19 pull in the appropriate tourist operators to say
20 whatever argument you wanted to pursue, and it was very
21 difficult to categorize as being all in support of or
22 all in opposition to, or all walking down the middle.

23 That was the point of some of those
24 anecdotes.

25 Q. Generally you would agree that more

1 outfitters, by far the vast majority, are concerned
2 about the impact of road access and are not in favour
3 of further construction?

4 A. Although, as you wanted me to say
5 yesterday, in my district being so unique they took a
6 different approach. So, you know, that's the dilemma
7 of trying to get -- trying to generalize to that
8 extent. Now you want me to say something different
9 from -- than Kenora District.

10 As a NOTOA position, NOTOA is
11 generally -- as an organization is -- as an
12 organization, is opposed to access roads in terms of
13 being wide open and they're extremely concerned about
14 the impact of access roads on their business. That's
15 the message they have been giving us and they've done
16 that quite well for -- as I mentioned the other day,
17 probably 20 years now, and I think we understand that.
18 We've certainly heard them.

19 Q. I understand further, Mr. Pyzer, that
20 Ms. Mogford, who is the Deputy Minister --

21 A. Was.

22 Q. Was the Deputy Minister at the time,
23 made a directive or a commitment that the district
24 manager would always hold an annual meeting with the
25 tourist industry?

1 a. That's correct.

2 Q. And that came from the Deputy
3 Minister level?

4 A. That's correct. She made that
5 announcement at a NOTOA convention, I believe it was
6 '85, '86.

7 Q. And your experience is that that has
8 been a helpful process?

9 A. It has been excellent in my
10 experience, less helpful in others. I know of other
11 districts where they held meetings and I believe three
12 tourist operators showed up. I believe that was
13 Dryden, three or four; those kinds of numbers.

14 But the first time we called a meeting I
15 believe we had 65, 70 people in the district showed up,
16 tourist operators. Probably -- almost 50 per cent.

17 MR. EDWARDS: Mr. Chairman, I'm getting
18 very close to a conclusion. I would like to have a few
19 minutes to consult with Mr. Blake who is here giving me
20 instructions, and I wonder -- if you'd care, we could
21 have the noon break early and there would be absolutely
22 no difficulty in getting finished before three or, if
23 you care, just have a short break and then continue.
24 But I would like to consult with Mr. Blake for a few
25 minutes, if I may.

1 THE CHAIRMAN: Okay. Well, at this point
2 we might as well take lunch, or have the lunch break
3 and then come back for the conclusion of your
4 examination.

5 MR. EDWARDS: Right. I won't be more
6 than an hour this afternoon.

7 THE CHAIRMAN: You won't be more than an
8 hour?

9 MR. EDWARDS: Right.

10 THE CHAIRMAN: So then why don't we break
11 until 12:30 and then we should be finished here by
12 1:30.

13 MR. EDWARDS: Thank you.

14 MR. FREIDIN: Can we make it 12:45?

15 THE CHAIRMAN: 12:45.

16 MS. BLASTORAH: We have a slight
17 technical problem in that we have arranged for lunch
18 for both our support people and our witnesses for
19 twelve o'clock and it won't be here until then.

20 THE CHAIRMAN: Okay, 12:45. And then we
21 should be finished by 1:45.

22 MR. EDWARDS: Yes.

23 THE CHAIRMAN: Would that be your
24 submission?

25 MR. EDWARDS: Yes.

1 THE CHAIRMAN: Very well. Thank you.

2 ---Luncheon recess taken at 11:30 a.m.

3 ---On resuming at 12:50 p.m.

4 THE CHAIRMAN: Be seated, please.

5 MR. TENAGLIA: If I might, Mr. Chairman,
6 yesterday Mr. Edwards raised a question with respect to
7 who was consulted in the preparation or review of the
8 final report on Crown land bridge management and I can
9 confirm for the Board that all the parties that were
10 identified on page 57 of that report were provided with
11 the opportunity to review the report and, more
12 specifically, Mr. Peter Brooke of the -- the manager of
13 the access road section had spoke to Bob McKercher of
14 NOTOA on January th 9th, '89, and Mr. McKercher advised
15 that they had no comments on the report.

16 THE CHAIRMAN: Thank you.

17 MR. EDWARDS: Mr. Chairman, I checked
18 the -- rechecked the testimony in-chief and Mr. Adamson
19 was absolutely right in his testimony in-chief that it
20 had been circulated, and I guess the date -- the
21 confusion sending out the request for input after the
22 date for input had already past, that was a merely a
23 typographical error and he was absolutely right on
24 that.

25 I thank Mr. Tenaglia for clearing that up

1 as well. Notwithstanding that, I still have some
2 questions for Mr. Tenaglia.

3 Q. Sir, dealing with your evidence
4 respecting tertiary roads, prior to the construction of
5 a tertiary road does one know which stands of timber
6 will have to be accessed by the road?

7 MR. TENAGLIA: A. Yes, they would be
8 approved in the timber management plan.

9 Q. And would you know generally what's
10 in the stand; you would know the species?

11 A. You would have a pretty good
12 indication of the species and it depends on whether
13 you've carried out any operational cruises as to how
14 accurate the volume estimates are.

15 Q. Would you have some knowledge from
16 air photos as well--

17 A. Yes.

18 Q. --ordinarily?

19 A. Depending on how recent aerial
20 photography was and if there has been any natural
21 disturbance since the aerial photography.

22 Q. Would the silviculture ground rules
23 be in effect?

24 A. In what respect?

25 Q. Well, would they have been prepared?

1 A. They are part of the timber
2 management plan, so yes, they would be.

3 Q. Yes. And can I assume that the
4 operator would have some idea of what equipment was
5 available to it? Would you agree that that's likely to
6 be the case?

7 A. In most instances, yes.

8 Q. Would the operator have some
9 understanding of what kind of equipment would be most
10 cost effective, given the particular area that it had
11 to go into? Would you expect that to be the case?

12 A. Yes.

13 Q. Given that they know the equipment
14 and the nature of the area, would you expect that they
15 also would know the economic distances which they could
16 skid the wood?

17 A. As part of the harvesting?

18 Q. Yes.

19 A. Yes.

20 Q. I noted at page 71 of the witness
21 statement, page 18 of your document you stated that
22 maximum skidding distances and efficiency of equipment
23 being used to carry out operations are important
24 considerations when locating a network of tertiary
25 roads throughout an operating area.

1 Do you recall stating that effect in your
2 written material?

3 A. Yes.

4 Q. And it would be undoubted that when
5 you are about to start building a tertiary road or
6 consider the location of a tertiary road that you would
7 have a secondary road already located?

8 A. Yes, in most cases.

9 Q. Let's us assume for the sake of
10 argument that you are in the third year of a five-year
11 plan, a secondary road has been constructed and during
12 the fourth year a particular tertiary road is planned.
13 At that stage you know where you are going to cut;
14 correct?

15 A. Yes.

16 Q. You know the species that you are
17 going to cut; correct?

18 A. Yes.

19 Q. You know any restrictions on
20 operations that may exist; correct?

21 A. In the area of concern but not
22 site-specific limitations.

23 Q. All right.

24 A. In the normal area of operations.

25 Q. You know any restrictions on

1 operations which might arise out of the area of concern
2 process; would that be correct?

3 A. Yes, that would be identified in the
4 timber management plan.

5 Q. So you certainly know at that stage
6 where you can't go?

7 A. Yes.

8 Q. You have got the silvicultural
9 groundrules; correct?

10 A. Yes.

11 Q. And you certainly know where you are
12 going to start because you have got to start somewhere
13 on the secondary road; correct?

14 A. Correct.

15 THE CHAIRMAN: We are getting somewhere I
16 assume, to a blockbuster question at the end of this?

17 MR. EDWARDS: Yes, Mr. Chairman, I am
18 trying to proceed.

19 Q. Sir, at that stage in the annual work
20 schedule why is it not possible to have a map that
21 tells the bulldozer operator generally where he or she
22 is going to go?

23 MR. TENAGLIA: A. Because he doesn't
24 know -- he doesn't know exactly where that tractor may
25 or may not be able to go. He has a general idea of

1 where it should go, but the specific location cannot be
2 determined until that operator is on the ground with
3 the tractor or the cut foreman is out there laying out
4 the location of that tertiary road.

5 Q. Sir, are you saying that it's
6 impossible to do that?

7 A. Is it impossible?

8 Q. Yes?

9 A. At what stage in the planning
10 process?

11 Q. On the annual work schedule basis, is
12 it impossible to give a general idea where the tertiary
13 roads are intended to go?

14 A. I question the value of doing that.

15 MS. BLASTORAH: Mr. Chairman, we went
16 over this extensively before the break this morning and
17 we have already heard Mr. Tenaglia say, I expect it to
18 be, six times that it's not practical to do that.

19 MR. EDWARDS: Q. Why is it not practical
20 in whose --

21 MS. BLASTORAH: He gave about six reasons
22 this morning why it wasn't practical.

23 THE CHAIRMAN: Well, let's end this
24 discussion with you answering that question once again
25 as concisely as you can.

1 MR. TENAGLIA: Can I have the question
2 once again, Mr. Chairman?

3 MR. EDWARDS: Q. Why is it not
4 practical, sir, to have a map even on an annual basis
5 which will indicate the general location of tertiary
6 roads?

7 MR. TENAGLIA: A. Because even at the
8 annual stage when the annual work schedule is being
9 prepared the area that is going to be harvested may not
10 have been walked, we may not know the exact physical
11 limitations of where that road can be constructed.

12 Associated with that is also the
13 seasons -- season of the year in which that area may be
14 harvested which may have an impact of where the road
15 can be constructed. If an area is going to be
16 harvested with a tertiary road in the summertime, it
17 makes a big difference.

18 The difference in location that the
19 season in which you are going to access an area may
20 impact on location of the tertiary road, or even within
21 the block, the tertiary roads within a harvest block
22 depends on when the season the area is going to be
23 harvested.

24 You are correct, at the annual work
25 schedule stage most of the operators will know what

1 kind of equipment they are going to use, will have an
2 indication of the kind of -- you know, the amount of
3 tertiary roads that will be required to be constructed
4 given the kind of logging system that they are using,
5 but I don't agree with you in that they can identify
6 the tertiary roads nor do they need to identify the
7 tertiary roads at the annual work schedule stage.

8 Q. Do you think it would assist the
9 public in its understanding of what was going to happen
10 in the annual work schedule to have those roads set out
11 in advance?

12 MR. FREIDIN: He said you can't do that.

13 MR. TENAGLIA: I don't believe that it
14 would assist the public because, again, I believe the
15 planning process would have accommodated addressing the
16 areas of concern.

17 Again, most of these tertiary roads are
18 in the areas of normal operations and in the areas of
19 concern we would have identified any limitations on the
20 construction or use of tertiary roads and the public
21 would have --

22 THE CHAIRMAN: Is it not the case, Mr.
23 Tenaglia, that if the public were concerned about
24 something, about some other value, that they would have
25 objected when you were formulating the plan for the

1 harvesting of that block in the first place?

2 MR. TENAGLIA: Absolutely, and that is
3 what you indicated this morning, Mr. Chairman.

4 THE CHAIRMAN: And that is how you end up
5 with the areas which are designated for natural
6 operation or areas which are in fact designated as
7 areas of concern?

8 MR. TENAGLIA: Correct.

9 MRS. KOVEN: But surely isn't it the case
10 with tourist operators that the area that they are
11 concerned about will not always become part of the
12 timber management plan. So even after you have gone
13 through approving the timber management plan, you
14 haven't been able to accommodate all their concerns and
15 so they are still left with the situation of something
16 like this sighting of a tertiary road which would still
17 concern them?

18 MR. PYZER: If I understand that question
19 correctly, during the planning process what we often
20 find is the tourist operator who had - and I think this
21 is the question you were asking - is that a tourist
22 operator may well have concerns above and beyond just
23 the allocated areas and they make those concerns known
24 and they could be with respect to unallocated areas and
25 that is why in fact, in terms of the conditions that we

would place on tertiary roads for example, that we would in fact ensure that when you see in fact that there are two or three areas that have to be allocated and they are going through areas that are unallocated, if you will, that we would in fact ensure that we have discussed those kinds of conditions if in fact they have a concern.

8 MR. EDWARDS: Q. Mr. Tenaglia --

9 MR. FREIDIN: Can I just indicate, this
10 matter will be addressed in more detail in Panel No. 15
11 and just so that I can perhaps indicate what that
12 evidence will deal with, so Mr. Edwards can decide
13 whether or not he wants to pursue this, the evidence
14 will be that the tourist operator through the planning
15 process can identify his concern in the identification
16 of a value.

17 You will hear what an area of concern is,
18 and an area of concern is a geographical area where
19 operations, if they take place, might affect that
20 value, in this case a tourist operator. And you will
21 hear how the area of concern planning process tries to
22 determine whether they have to have some sort of
23 prescriptions to protect the value.

24 One of the things that might be
25 considered and might in fact be the prescription would

1 be: No tertiary roads in certain locations. That is
2 an option, that process allows for that sort of
3 discussion to take place.

4 So if it's a concern of the operator you
5 can ask the witnesses in Panel No. 15 whether in fact
6 there could be a prescription in appropriate
7 circumstances which addresses a concern about where
8 tertiary roads go.

9 THE CHAIRMAN: But presumably if that
10 doesn't occur, if those values are not identified and
11 the area is allocated for normal operations, then the
12 evidence is that the location of a tertiary road would
13 not likely impact upon another value or it would have
14 been identified at an earlier stage; is that correct?

15 MR. FREIDIN: That's generally correct.
16 I mean, people on the planning team rely on the tourist
17 operators and everyone else to come forward and
18 indicate what their values are so that the concerns can
19 be taken into account.

20 If they don't come forward, then...

21 THE CHAIRMAN: Because if they don't come
22 forward -- would it follow as well, if they don't come
23 forward, not only might the value that wasn't
24 identified by them be subjected to a tertiary road, but
25 it might in fact be subjected to harvesting itself?

1 MR. FREIDIN: Well, Mr. Tenaglia, can
2 answer that question. I think the evidence in earlier
3 panels has been that many values get identified by the
4 Ministry of Natural Resources and the people on the
5 planning team quite separate and apart from whether the
6 public come forward if those values which are
7 identified are in fact values which are of interest to
8 the public.

9 MR. MARTEL: Can I ask a question,
10 because something -- I think the word that Mr. Edwards
11 is using is generally. If I understood this morning,
12 most of those tertiary roads are not that long, I think
13 someone said maybe some of them could be two
14 kilometres.

15 When you are talking generally, how far
16 astray can you go really -- if you are going to be
17 confined to a certain cutting area in a general
18 locality with a road that wouldn't exceed two
19 kilometres, how far can you go out of whack by just
20 putting a general location of where a road might go?

21 I think that is what Mr. Edwards is
22 trying to get at. He's not asking for a specific
23 indication of you are going to be held to the line no
24 matter what happens, you know, that in effect what is
25 wrong with a general locale.

1 When you take all those factors into
2 consideration, there is really not much -- not very far
3 you could go awry, because you are moving in a very
4 restricted area anyway.

5 MR. PYZER: I just want to make a couple
6 of points before Mr. Tenaglia answers. One, the
7 dilemma is when you start talking about generally and
8 put things on maps, the generally becomes the specific,
9 I think, and then we all lose sight of the fact that
10 that was a general location, that is where the road had
11 to go, and then we start talking amendments, major,
12 minor, and we forget it was general. That is one point
13 I would make.

14 MR. MARTEL: Excuse me right there,
15 because would you have to get an amendment. If there
16 was an understanding it was just a generality, would
17 you have to go for a major, or could that be kind of --
18 the type of amendment which the district manager could
19 do?

20 MR. PYZER: I was kind of talking --

21 MR. MARTEL: Except if it is an area of
22 concern.

23 MR. PYZER: Yes. I was talking
24 philosophically.

25 MR. MARTEL: Yes.

1 MR. PYZER: I have trouble sometimes, I
2 guess in this forum when we talk about general
3 understandings and general agreements and those sorts
4 of things because they become rigid and everyone likes
5 rules.

6 The other point I was going to make, and
7 I did want to clear up, is that we are now talking
8 about tertiary roads being two kilometres. Most
9 tertiary roads are really little -- a two-kilometre
10 tertiary road is a big tertiary road.

11 The third point I wanted to make is that
12 certainly in northern Ontario and the district that I
13 am most familiar with, throughout the summer period we
14 are continually going into modified fire guidelines and
15 we move timber operators tomorrow morning. They will
16 get a call tonight if the conditions warrant and they
17 are pulled off all of their operating blocks and they
18 are told to go to low ground and if they can't go to
19 low ground, we shut them down.

20 And that means you have got to have
21 sites. If you are working on upland ridge areas and
22 they will move to sites where they don't have a
23 tertiary road into and that is when they start laying
24 that road out, and those are the kind of operational
25 considerations that I think we are trying to talk about

1 here, is they have a large number of small operating
2 areas and for a number of reasons we will shift them
3 about on a constant basis, on a daily basis and --
4 well, I'll let Mr. Tenaglia talk about the balance.

5 MR. TENAGLIA: I would agree with you,
6 Mr. Martel. In a general sense you could identify
7 location of tertiary roads at the annual work schedule
8 but the question is, just what do you mean by general?
9 Is it a hundred metre corridor, is it a 500-metre
10 corridor?

11 MR. MARTEL: Well, those would be the
12 parameters you would have to lay down. I mean, I
13 understand your dilemma. I mean, you don't want to get
14 boxed in and neither does the producer to being held to
15 a confined area regardless of what the circumstances
16 are.

17 I can understand the industry -- the
18 tourist industry concern, they would just like to know
19 roughly where you are going to operate and surely the
20 parameters for that could be defined.

21 I mean, you couldn't be held to something
22 that is black and white and, you know, come hell or
23 high water that isn't going to change because that
24 isn't what anybody -- that isn't going to benefit
25 anyone either in terms of negotiating and trying to

1 mitigate or to reduce the tensions with the conflict.

2 But I think the thing that amazes me is
3 that distance isn't that far that we are talking about.
4 I agree with Mr. Pyzer, they are not very long, and
5 that's why you have to have the flexibility built in.
6 I understand that as well.

7 MR. TENAGLIA: I think we have to
8 remember that tertiary roads are indeed very short-term
9 roads. They may only last two or three months, short
10 enough to get the wood out, cut the area and get the
11 wood out. We may not be able to use those tertiary
12 roads for renewal purposes, we may have to fly people
13 in.

14 So for that reason I don't understand, I
15 guess, the need to have to identify the location even
16 in a general sense in areas of normal operating areas.

17 MR. EDWARDS: Q. If I could just ask a
18 couple of questions following the questions of the
19 members of the Board.

20 Mr. Tenaglia, you still hold to your
21 position, as set out in your evidence statement, that
22 the average or the life expectancy of a tertiary road
23 is normally one to five years. You would agree with
24 that; would you?

25 MR. TENAGLIA: A. Yes.

1 Q. Is it not, sir, a procedural concern
2 of yours rather than a practical concern that makes you
3 suggest that it would be very difficult or impossible
4 to list these or map these, and what I am getting at is
5 this: Are you concerned that it may require a major or
6 a minor amendment to the timber management plan if you
7 put these things on a map. Would that be a concern if
8 you were going to move the location somewhat from a
9 line drawn on a map?

10 A. I am concerned that the lines on the
11 map may mean nothing, that they may have to change when
12 the operator is in there and that we are just going to
13 set up a process which will be meaningless.

14 If the low location is going to change on
15 a regular basis, I question the value of trying to
16 identify the location of those tertiary roads.

17 Q. Would there be any harm in attempting
18 that?

19 A. Again, I question the value. If we
20 have identified all the areas of concern and identified
21 the restrictions on the tertiary roads, then why do we
22 need to identify the tertiary roads in areas of normal
23 operations.

24 Q. Is it your experience, sir, at these
25 public information sessions that the public comprehends

1 the material better if maps are

2 A. Maps are available.

3 Q. Yes, but is it?

4 they help the members of the public

5 going on?

6 A. Of course.

7 Q. Yes. And it's

8 go through a timber management plan

9 foot thick in the afternoon that

10 public comment is it?

11 A. No, you are wrong.

12 30-day notice period, people can

13 plan at their leisure. We will

14 show them up at their residence

15 are not limited to an afternoon

16 Q. How long are

17 A. For what?

18 Q. Public input.

19 A. They are a 30-

20 input period.

21 A. I appreciate

22 A. Not for the moment.

23 A. I'm getting it.

24 A. Not for the moment.

25 a question to extend that period?

1 comments that we generally receive.

2 Q. On an annual basis will the tertiary
3 roads at least be drawn onto a map so that in the
4 annual work schedule for 1990 you can look at what
5 tertiary roads were built in 1989?

6 A. No. We don't report on an annual
7 basis the location of tertiary roads.

8 Q. So if one is looking at an annual
9 work schedule for 1990 you won't even know where the
10 1989 roads are unless you've flown over or walked the
11 ground yourself?

12 A. They -- generally not.

13 Q. Is that impossible to do?

14 A. To draw in the...?

15 Q. '89 roads in early 1990.

16 A. The annual work schedules for the FMA
17 companies are required, I believe it's November 1st or
18 November 31st, that the companies have to submit their
19 annual work schedules. At that point in time we have
20 only gone through seven months of operations, so you
21 are going to get an incomplete picture and I would
22 suggest that -- can you follow me on that?

23 Q. I can follow you. I am curious, does
24 much road building take place in the winter months, I
25 mean other than winter roads?

1 A. Just as much as in the summertime.

2 Q. I see.

3 A. Again, tertiary roads are going in
4 just before the harvesting operations for the most
5 part. And so what you are going to get in November is
6 you are going to get seven months of tertiary roads if
7 you want that in an annual work schedule, and I
8 question the value of that.

9 Q. Well, do you think it would...

10 A. And then there is obviously a lead
11 time required to take supplementary aerial photography
12 to locate the exact location of the tertiary roads so
13 you might get a half year's picture, if that much.

14 Q. Well, you showed a map or you
15 produced a map of Doucette Township which I believe is
16 in Wawa District which had some tertiary roads drawn on
17 that. How do you ever get to a map with tertiary roads
18 drawn in? At what stage is one available?

19 A. We can produce it if we want to.

20 Q. All right. But when do the members
21 of the public get a chance to look at it?

22 A. After the fact.

23 Q. Even after the fact, yes. I mean,
24 you have told me that you can't do it on a yearly
25 basis?

1 A. We don't normally identify the
2 location of tertiary roads in any annual reports and I
3 think that may be appropriate for Panel 15 or Panel 16
4 to address that in their annual reports.

5 Q. All right. Perhaps I will raise that
6 issue with Panel 15 then, sir.

7 Sir, however, if these tertiary roads
8 aren't on a map, which is generally available at any
9 time, how would a member of the public who hasn't
10 actually been to the site trace where the operations
11 have occurred?

12 THE CHAIRMAN: Well, what is the value
13 that is being impaired if they don't know where the
14 tertiary road is in the first place, or they haven't
15 identified the value that they wanted to protect so
16 that the road wouldn't have been built in the first
17 place?

18 I mean, there has to be an impact from
19 this road. Why would they not be aware of the impact
20 from the road if they don't know where the road is?

21 MR. EDWARDS: If the tertiary road is
22 knocked through in November, goes into a remote lake
23 which is used for fly-in purposes, it may be months
24 before somebody in the business of my clients discovers
25 its location and it ought not to be the individual

1 members of the public - and that can be any public, I
2 am not just talking about tourist outfitters - who has
3 to know who has been cutting where. It should be
4 traceable.

5 THE CHAIRMAN: But would not your client
6 in that scenario have been aware at an earlier stage
7 that there was intended to be harvesting in the
8 vicinity of that remote lake, at that point he would
9 have come forward supposedly and said: I want this to
10 be an area of concern, I have a value I want protected
11 here, not only do I not want a road built but I don't
12 even want it harvested here.

13 MRS. KOVEN: But surely, Mr. Chairman,
14 that is the problem that a person's identification of
15 an area of concern is not automatically -- it doesn't
16 automatically become one in the timber management
17 process.

18 I mean, I think that is part of the
19 dispute. The Ministry is not saying that every request
20 for an area of concern is granted.

21 MS. BLASTORAH: Mrs. Koven --

22 MRS. KOVEN: And also I think the NOTOA
23 position has been in the past that even where there are
24 areas of concern identified on lakes, it's not usually
25 the entire shoreline and so there are impacts from

1 other parts of the lake.

2 MR. EDWARDS: That is a very fair summary
3 of our concerns.

4 MR. PYZER: But I think the key point is,
5 is that while it may have raised an issue or an area of
6 concern, whatever the Ministry did with that, whether
7 they -- whatever the final decision would have been
8 reflected in the final plan.

9 So to use Mr. Edwards' term, you
10 wouldn't -- if the road was knocked through to the
11 lake, they would have known that it was the Ministry's
12 approved plan to knock it through to the lake. It
13 wouldn't be something that you would find out by flying
14 over it, it would be something that would be in an
15 approved timber management plan. It would be a
16 decision.

17 THE CHAIRMAN: Or it would be designated
18 an area of concern?

19 MR. PYZER: Absolutely.

20 THE CHAIRMAN: Because --

21 MR. PYZER: In all honesty, I don't
22 believe we would be knocking it through to the lake and
23 given bump-ups and all the other appeal mechanisms and
24 whatnot, we would have run its course before in fact
25 that final decision was either affirmed or amended.

1 THE CHAIRMAN: I guess, Panel, the
2 problem I am having in understanding this - and I don't
3 know if anyone else is sharing my degree of confusion -
4 is the fact that before you get to the roads question
5 at all, in terms of a tertiary road, you have to get
6 over the harvesting question, you have to get over the
7 question as to whether or not there is going to be any
8 activity in that area; i.e., harvesting which will
9 necessitate the building of a road to get in, whether
10 it's for harvesting or reforestation or maintenance or
11 tending or anything else. And anybody who has a
12 concern in terms of a value that they want protected
13 would have input to the planning process in terms of
14 the harvesting decision or the activity decision before
15 you get to the secondary decision after you have made
16 that one that there shall or shall not be a road -- a
17 tertiary road somewhere.

18 And, therefore, I can't understand, Mr.
19 Edwards, where the area of surprise is to the members
20 of the public that would be concerned with the
21 protection of values out there because the decision to
22 harvest would already have been made in accordance with
23 the regular planning process.

24 I don't know. Is that essentially the
25 way it works or am I completely off base?

1 MR. PYZER: Well, that is exactly the way
2 it does work and certainly Mr. Edwards has indicated
3 from his client's perspective one of the key concerns
4 of NOTOA, if not the key concern, has been access.

5 And clearly when tourist operators come
6 into the district they want to talk about access and
7 they want to talk about access from a primary road,
8 secondary road and they want to talk about those
9 conditions to tertiary as well as where are the areas
10 where we don't want them to go.

11 It's not like the tourist industry walks
12 in saying: We weren't aware you were building roads.
13 Mr. Edwards has stated for two days, and I agree with
14 you one hundred per cent, it's NOTOA's big concern.
15 That is why they want to talk to us about those
16 conditions and where tertiary roads shculdn't go well
17 in advance of them ever being laid out and planned.

18 MR. EDWARDS: Q. If I might just ask one
19 question arising out of a question from the Board.

20 Mr. Pyzer, would it be your evidence that
21 every time an area of concern is expressed or concern
22 over an area is expressed by a member of the public
23 that doesn't automatically mean that that area becomes
24 an "area of concern"?

25 MR. PYZER: A. No. But again, the fact

1 that usually -- if it wasn't designated as an area of
2 concern for whatever reason and the Ministry chose to
3 do something about that, those are the kinds of -- and
4 I contend that they are fairly isolated - but those are
5 what become the issues.

6 Rarely do people accept that decision.
7 They say: This is an area of concern, I don't want a
8 tertiary road or I don't want a road or I don't want a
9 road, or I don't want to see harvesting and this is an
10 area of concern. And if in fact the Ministry did not
11 follow through on that, I contend that they don't leave
12 it there, that becomes either a political issue or my
13 boss hears about it, or a NOTOA executive hears about
14 it and occurs at one of those annual meetings. It is
15 taken somewhere. People don't walk away from those
16 when their areas of concern are not treat accordingly.

17 But regardless of that, there still is a
18 decision and that decision is what the Ministry will do
19 relative to all that information that has come forward
20 and you can see that at the plan review stage and there
21 are mechanisms by which you can deal with the decision
22 if you don't like it.

23 Q. Does identification of an area of
24 concern in any way preclude the creation of a tertiary
25 road inside that area?

1 A. It could well, absolutely.

2 Q. It could, but it doesn't have to?

3 A. Well, it would depend on what the
4 area of concern was and what the -- and if the concern
5 was relative to tertiary roads, then absolutely that is
6 exactly what we would deal with.

7 And if the tourist operator did not want
8 the tertiary road within a certain distance or a
9 certain location or certain time of year, wanted to see
10 controls on when he heard the vehicles operating during
11 the day or night, during the spring, fall, those are
12 all the kinds of conditions we would put on that
13 tertiary road.

14 Q. Sir, if a road is put through
15 improperly; that is to say, in violation of
16 prescriptions and damage to a tourism value or any
17 other value occurs, does the Ministry see it as its
18 role to know who put the road through?

19 A. Yes.

20 Q. To make sure that the damaging party
21 is traceable?

22 A. Yes.

23 Q. To say can be located?

24 A. Yes.

25 Q. The monitoring of the location of the

1 road as to whether it fits the prescription is the
2 responsibility of the MNR?

3 A. That's correct.

4 THE CHAIRMAN: Will that be dealt, Mr.
5 Freidin, in the monitoring panel in detail?

6 MR. PYZER: Yes.

7 MR. FREIDIN: I think the issue of
8 trespassing certainly was raised by Mr. Edwards in one
9 of the very early panels and I indicated then that the
10 enforcement related issue were issues which would in
11 fact be dealt with in Panel 16.

12 MR. PYZER: We certainly have had
13 occasions where our conservation officer will go out
14 and do a thorough investigation and determine -- in
15 fact we just dealt with one very recently in Kenora
16 District.

17 MR. EDWARDS: Q. If damage occurs to the
18 tourist business by reason of an improper access --

19 MR. FREIDIN: I'll let you finish the
20 question, but if you are going to ask him if the
21 Ministry feels they should compensate them, et cetera,
22 et cetera, indeed I think we have dealt with that.
23 Again, I think we are getting into monitoring.

24 THE CHAIRMAN: I think in fairness, Mr.
25 Edwards, when we get to the monitoring panel the Board

1 is going to be interested in a whole series of
2 violations that may occur in the planning process and
3 what results from that.

4 MR. EDWARDS: If I can just have a
5 moment, Mr. Chairman, I am very close.

6 MR. MARTEL: Maybe I can ask Mr. Pyzer a
7 question in the meantime.

8 Have you ever had a situation where, for
9 example, you had an area of concern but there was just
10 simply no way to get around it, two lakes very close
11 together, if you cut your right-of-way through you
12 would have to go through there anyway and that would --
13 you might well not want to but circumstances, economic
14 and otherwise, might force you to go -- does that occur
15 occasionally?

16 MR. PYZER: Yes. I can visualize when
17 that would and, although I have never seen one, I could
18 visualize probably a gate on a tertiary road in that
19 kind of an instance or a closure for a very small
20 portion, a sign up.

21 I have never seen a gate on a tertiary
22 road but it would certainly be an option.

23 THE CHAIRMAN: But is it not in every
24 case a balancing of competing interests?

25 MR. PYZER: Yes.

1 THE CHAIRMAN: So if somebody identifies
2 an area of concern, but there is other concerns or
3 other interests of other parties, you may in some
4 circumstance go against that person raising the concern
5 in favour of other interests because the value
6 associated with the other interest in the scheme of
7 things is just heavier in weight, so to speak?

8 You can't accommodate everybody all the
9 time?

10 MR. PYZER: That's right. At least you
11 can't make -- in terms of wanting to do a win/win, you
12 may not come out with a hundred per cent on two sides,
13 but you may well wind up with a 92/78 if you put scores
14 to it sort of thing.

15 MR. FREIDIN: Mr. Chairman, just so there
16 is no misunderstanding, we will deal in Panel No. 15
17 with situations like you have described. Primary and
18 secondary roads can in fact go into areas of concern
19 and that gives rise to a planning -- additional
20 planning requirements and documentation that you will
21 hear about.

22 So I just don't want to leave the
23 impression that primary and secondary roads don't go
24 through areas of concern and considerations aren't
25 taken into account.

1 MR. MARTEL: I'm speaking primarily of
2 tertiary.

3 MR. PYZER: We had an instance very
4 recently, in fact within the last few months, where a
5 road got illegally or pushed through an area and was
6 investigated by the conservation officer, we determined
7 the person who did it. It was a remote fly-in tourist
8 lake, created tremendous impact on the tourist operator
9 himself. And you could ask the question: What can we
10 do in terms of charging. It turned out to be the
11 tourist operator himself who built the road.

12 MR. MARTEL: I think Mr. Tenaglia was
13 going to answer something further to my question.

14 MR. TENAGLIA: Yes. In response to your
15 question, Mr. Martel, a technique generally used in --
16 if we're going to build a tertiary road in a very
17 sensitive area, as your example cited between two
18 lakes, would be possibly a winter access road and
19 restrict the harvesting just to winter so that there is
20 absolutely no potential conflicts with the summer use
21 on the lakes.

22 MR. EDWARDS: I think I have one last
23 question.

24 Q. Mr. Pyzer, if a road is put through
25 improperly by whoever; that is to say, a lake is

1 accessed in violation of the prescriptions, who is
2 responsible for correcting the problem?

3 MR. PYZER: A. Again, if I could draw on
4 this particular example, and it's not to pick on the
5 person because he did it entirely sincerely.

6 We had a road, an access road, and we had
7 intentionally -- we laid out this road going through
8 the planning process and whatever, it did not access
9 the lake.

10 There was a tourist camp on it and the
11 fellow chose to push a road through in the winter time.
12 He bladed a road through, he bladed it through an area
13 we had scarified, he bladed it through the reserve that
14 we had created along the lakeshore and that saved him
15 \$20-, \$30,000 as opposed to having flying the equipment
16 in.

17 The lake got discovered by people in
18 Kenora District unfortunately, and everyone -- not
19 everyone, but in his words everyone was coming up to
20 fish on that lake, and it created a major problem for
21 us. And the first step was we came out and there was
22 no sense charging the person in that case. You could
23 say he did it to himself, but he didn't do it
24 intentionally.

25 I mean, those are the sorts of things

1 that you have to weigh. It is an unfortunate -- now,
2 what did we do?

3 We came out, the Ministry went in. We
4 sent our own crews in, we pulled the road out, we
5 pulled culverts out, we flew up and we monitored what
6 was happening there. People still came in on
7 four-wheel drives and quads.

8 We've now come out to the highway and
9 we're now out to the main access road and we've pulled
10 out another set of culverts there, we've sent
11 conservation officers up, we're monitoring it on a
12 day-to-day basis.

13 So in the last six months on that
14 particular instance we have sent our own people up,
15 we've paid for that road to be pulled out, and we're
16 trying to render it as impassable as possible and we
17 are monitoring to make sure other people don't go down.

18 Q. What about the situation where it's
19 somebody who doesn't do it to himself, as you put it?

20 A. No difference.

21 Q. Who's responsible in those
22 circumstances?

23 A. If we can find out who did it we
24 would charge probably the person for doing it and there
25 are a number of possible areas that we could lay those

1 charges. a.

2 You'd have to look and see whether it was
3 intentional, unintentional, what the reasons were, was
4 it an honest mistake that he thought he was following a
5 corridor and he, for whatever reason, got off the
6 corridor. You'd have to look at what the impacts were.

7 Q. Is there any difficulty, sir, in
8 finding out who's responsible in these circumstances?

9 A. Many times, sure. You may find a
10 trail or a path through the bush and not know who built
11 it.

12 Q. Is there difficulty in -- if a
13 company, whether the forest management agreement holder
14 or a sub-contractor were to access a lake or to go
15 beyond the prescriptions, create some type of improper
16 access--

17 A. Yes.

18 Q. --in that circumstance, is there any
19 difficulty in your view in finding who's responsible?

20 A. Actually -- probably it's easier to
21 deal with companies in terms of enforcement and getting
22 mitigation and getting it resolved than most of the
23 other situations.

24 Q. Who in that circumstance, in your
25 view, would be responsible for correcting the problem?

1 Does the Ministry carry the can or does the company?

2 A. My initial reaction would be in most
3 cases we would get the company to do it.

4 MR. EDWARDS: Thank you very much,
5 members of the panel, those are my questions.

6 Thank you, Mr. Chairman.

7 THE CHAIRMAN: Thank you, Mr. Edwards.

8 Ladies and gentlemen, before we rise for
9 the week the Board wants to make a very brief statement
10 about a concern that has plagued us now for some time,
11 and that is the time we are losing over being available
12 to hear further evidence and the witnesses not being
13 available to put in that evidence.

14 Now, I don't want to misconstrue --

15 MR. FREIDIN: The witnesses not being
16 available?

17 THE CHAIRMAN: Sorry, the parties -- not
18 the witnesses, the other parties who are usually
19 cross-examining--

20 MR. FREIDIN: Thank you.

21 THE CHAIRMAN: --are not ready to go. I
22 think it is going to necessitate a change in procedure
23 as far as the way we are going to handle the remainder
24 of the case.

25 We have taken pains, as you are probably

1 all aware, to in some cases sit very long hours. We
2 have started on some occasions as early as eight
3 o'clock, we have sat as late as eleven o'clock on the
4 odd occasion.

5 The purpose in us sitting some of those
6 lengthy hours is to ensure that, where it is
7 unavoidable because we are losing hearing days,
8 particularly on the part of the Board members who for
9 one reason or another cannot always be here together on
10 the same day, we have attempted to make up that time by
11 sitting lengthier hours.

12 We have attempted to institute various
13 procedures such as scoping, the avoidance of repetition
14 of earlier evidence and generally have attempted to
15 conduct the hearing in a manner which will expedite the
16 putting in of the overall case.

17 What we are finding, however, is although
18 we are making some strides in those areas, we are not
19 appreciably shortening the overall time for this entire
20 case. What we are gaining on the individual day in
21 terms of the evidence coming in we are losing by being
22 up here, in this case for instance, idle for a day and
23 a half.

24 Now, we are certainly not going to
25 castigate counsel in any way for being less time than

1 they anticipated in their cross-examinations, or in the
2 case of the applicant of putting in the direct
3 evidence.

4 We realize that it is very difficult for
5 counsel to be able to accurately anticipate how long
6 they are going to be; a lot of it depends on the
7 questions asked, a lot of it depends on the
8 interjections by the Board and the direction the Board
9 is taking with its own questioning, and a lot depends
10 on the answers preferred by the panel.

11 Notwithstanding that, we are going to, I
12 think, institute a procedure that the party who is next
13 in line is going to be kept aware by Mr. Mander of
14 exactly where the party preceding is in their
15 examination and is going to be expected to, in effect,
16 be on tap to go when they are reached.

17 We will not be affording the parties the
18 luxury I think in the future of indicating that they
19 will not have to present their cross-examination or, at
20 a later stage, their evidence on a fixed day such as we
21 did - and this is by no means by way of criticism, Dr.
22 Quinney - as we did with OFAH to indicate that they
23 could present their cross-examination on a fixed day, I
24 think it was the 11th of September. That was
25 predicated, of course, on an estimation by the various

1 parties that we would occupy fully our time up until
2 that point in time and, for one reason or another, that
3 particular party requested that they be given a fixed
4 day.

5 I think we are going to request that all
6 parties in the future be ready to go in the order that
7 they are expected to present either their
8 cross-examinations or their evidence.

9 Now, there will be some deviations from
10 time to time, we will be flexible and take into account
11 special circumstances, but I think we are going to have
12 to get more on the basis that the courts of law use
13 and, that is essentially: You are participating in a
14 major case, it is an expensive process to both the
15 public, the parties and the Board and, as a
16 consequence, we do not want to delay the overall length
17 of time that it is going to take to complete this case
18 and get to a decision, and we find that we are wasting
19 a number of days on the basis that, for one reason or
20 another, the party next in line is not ready to go.

21 Where the Board can't sit on a scheduled
22 day, it will attempt to make up the time by sitting
23 longer hours. Where certain parties can't be here for
24 a very good reason, we would ask, firstly, that they
25 give notification to Mr. Mander as early as possible;

1 and, secondly, that we make every attempt to have
2 another party fill in so that we aren't left with
3 situations where we are up here, the witnesses are up
4 here, counsel are up here, we are ready to go, and we
5 run out of evidence or we run out of the ability to
6 cross-examine and have to shut down the hearing, in the
7 case of this week, a day and a half early.

8 We are most appreciative of all your
9 efforts to keep your examinations concise and shorten
10 your presentations where possible, but we do think that
11 something has to be done with the scheduling of the
12 next party in line.

13 So we will be issuing some instructions
14 to Mr. Mander to perhaps circulate in writing to all
15 the parties so that they will be expected in the future
16 to keep a watching brief on where we are and be
17 prepared to participate in the order that they are
18 expected to participate and, in that way, hopefully we
19 will have an overall shortening of the process, because
20 it doesn't make much sense to us to sit these lengthy
21 hours only to end up with the hearing taking exactly as
22 long as it would have taken had we not sat the longer
23 hours.

24 It is an imposition both on the Board and
25 the parties because we are dealing with some very

1 technical evidence and it is somewhat trying to sit
2 here for eight, nine, ten hours in some cases only to
3 find out that during that week of testimony we have
4 lost the time anyways.

8 MS. BLASTORAH: Mr. Chairman, just on
9 that point, perhaps it might be helpful to the parties,
10 like other individual parties or just the general
11 public who are following the hearing and might be
12 interested in hearing the cross-examination of a
13 particular party, it might be helpful if progress
14 reports could also be given on the 1-800 number that
15 the Board has provided so that the general public can
16 be kept aware of the progress of cross-examination.

17 In most cases, by the end of a given day
18 we have some sense of where we are.

19 THE CHAIRMAN: If I am not incorrect, I
20 think that is already being done. If you call up the
21 Board's 1-800 number there is a statement given every
22 day at the conclusion of the proceedings as to who is
23 cross-examining and how long they are expected to
24 continue cross-examining and who comes next.

25 MS. BLASTORAH: I'm sorry, Mr. Chairman.

1 I haven't had occasion to call that number so I wasn't
2 aware of that.

3 THE CHAIRMAN: It is already being done
4 for that very reason.

5 We will adjourn until 1:00 p.m. on
6 Tuesday. Thank you.

7 ---Whereupon the hearing adjourned at 1:50 p.m., to be
8 reconvened on Tuesday, September 5th, 1989,
commencing at 1:00 p.m.

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